

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AO]
) Docket No. 15-0071
)
Milk in California)
)

VOLUME XXIV

TRANSCRIPT OF PROCEEDINGS

November 3, 2015

Myra A. Pish, CSR No. 11613
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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) [AO]
) Docket No. 15-0071
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Milk in California)
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BEFORE U.S. ADMINISTRATIVE LAW JUDGE
JILL S. CLIFTON

Tuesday, November 3, 2015

9:01 a.m.

Clovis Veterans Memorial District
808 4th Street
Clovis, California 93613

TRANSCRIPT OF PROCEEDINGS

VOLUME 29

Reported by:

Myra A. Pish CSR
Certificate No. 11613

1 APPEARANCES:

2 U.S. DEPARTMENT OF Office of the General Counsel
 3 AGRICULTURE: BY: BRIAN HILL, ESQ.
 LAUREN BECKER, ESQ.

4 U.S. DEPARTMENT OF ERIN TAYLOR, Dairy
 5 AGRICULTURE: Product Marketing Specialist
 LAUREL MAY, Marketing Specialist
 6 MEREDITH FRISIUS, Marketing Specialist

7 CALIFORNIA DAIRIES, Law Offices of Marvin Beshore
 8 INC., DAIRY FARMERS BY: MARVIN BESHORE, ESQ.
 OF AMERICA, INC., Hanson Bridgett, San Francisco
 9 LAND O'LAKES, INC.: BY: MEGAN OLIVER THOMPSON, ESQ.

10 DAIRY INSTITUTE OF Davis Wright Tremaine
 11 CALIFORNIA: BY: CHIP ENGLISH, ESQ.
 ASHLEY VULIN, ESQ.

12 LEPRINO FOODS: SUE TAYLOR, Vice-President
 13 Dairy Economics and Policy

14 DEAN FOODS COMPANY: ROB BLAUFUSS

15 HILMAR CHEESE JOHN VETNE
 16 COMPANY: JAMES DeJONG

17 CALIFORNIA PRODUCER Stoel Rives
 18 HANDLERS ASSOCIATION: BY: NICOLE HANCOCK, ESQ

19 SELECT MILK PRODUCERS: MILTNER LAW FIRM, INC.
 20 BY: RYAN MILTNER, ESQ.

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I N D E X - V O L U M E 29

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1 TUESDAY, NOVEMBER 3, 2015 - - MORNING SESSION

2 JUDGE CLIFTON: We're back on record, at 9:01 in the
3 morning it is November 3, 2015. It is a Tuesday. We're in
4 Clovis, California. This is the milk hearing. This is Day 29
5 of the hearing.

6 My name is Jill Clifton. I'm the United States
7 Administrative Law Judge who is assigned to take in the
8 evidence at this hearing. The evidence consists of testimony
9 and exhibits. And the testimony will be certified when I
10 certify the transcript, that will include any corrections that
11 I adopt. Those are proposed by anyone who wants to suggest
12 them. And once I certify the exhibits that were either
13 admitted or rejected, and certify the corrected transcript all
14 in one document, my involvement in the case is concluded.

15 I would like now to take appearances of others
16 participating, beginning with employees of the USDA.

17 MR. CARMAN: Good morning, Clifford Carman, C-A-R-M-A-N,
18 Assistant to the Deputy Administrator Dairy Programs.

19 MS. TAYLOR: Good morning, Erin Taylor, T-A-Y-L-O-R,
20 Marketing Specialist with AMS Dairy Program, the singular.

21 MS. MAY: Good morning, Laurel May, USDA AMS Dairy Program.

22 MS. FRISIUS: Good morning, Meredith Frisius, F-R-I-S-I-U-S
23 and I'm with the USDA Dairy Program.

24 MR. SCHAEFER: Henry Schaefer, H-E-N-R-Y, S-C-H-A-E-F-E-R,
25 Agricultural Economist for the Upper Midwest Milk Marketing

1 Order Federal Order 30 on detail to USDA Dairy Programs.

2 MR. SWENSON: Virgil Swenson, V-I-R-G-I-L, S-W-E-N-S-O-N,
3 Assistant Market Administrator with the Central Order in
4 Kansas City, on detail with USDA AMS Dairy Program.

5 MS. BECKER: Good morning, Lauren Becker, an Attorney with
6 the USDA Office of the General Counsel.

7 MR. HILL: Good morning, I'm Brian Hill, H-I-L-L, Attorney
8 with the Office of the General Counsel.

9 MR. BESHORE: Marvin Beshore, M-A-R-V-I-N, B-E-S-H-O-R-E,
10 Counsel for the Cooperative Proponents of Proposal Number 1,
11 California Dairies, Dairy Farmers of America, and Land O'Lakes.

12 MS. OLIVER THOMPSON: Good morning, Megan Oliver Thompson,
13 Megan is M-E-G-A-N, I'm an Attorney with the firm Hanson
14 Bridgett in San Francisco. That's spelled H-A-N-S-O-N,
15 B-R-I-D-G-E-T-T, and I'm co-counsel for the Proponents of
16 Proposal Number 1.

17 MR. JABLONSKI: My name is Gary, G-A-R-Y, Jablonski,
18 J-A-B-L-O-N-S-K-I, Consultant working with the dairy
19 cooperatives.

20 MR. ENGLISH: Good morning, your Honor. My name is
21 Chip English, C-H-I-P, E-N-G-L-I-S-H, I'm an Attorney with the
22 law firm of Davis, Wright, Tremaine with my principal office in
23 Washington DC, and I'm here on behalf of Proponents for
24 Proposal 2, the Dairy Institute of California. And I think I'm
25 also in favor of the plural.

1 MS. VULIN: Good morning, Ashley Vulin, A-S-H-L-E-Y, V --
2 as in Victor -- U-L-I-N, co-counsel for the Dairy Institute of
3 California.

4 MR. SCHIEK: Good morning, William Schiek, S-C-H-I-E-K,
5 Economist with the Dairy Institute of California.

6 MR. UMHOEFER: Good morning, I'm John Umhoefer, J-O-H-N,
7 U-M-H-O-E-F-E-R, and I'm Executive Director of the Wisconsin
8 Cheese Makers Association.

9 MR. STETTLER: Good morning, Steve Stettler,
10 S-T-E-T-T-L-E-R, President of Decatur Dairy and a cheese Maker
11 out of Wisconsin.

12 MR. BUHOLZER: Good morning, Steve Buholzer,
13 B-U-H-O-L-Z-E-R, one of the co-owners of Klondike Cheese in
14 Monroe, Wisconsin.

15 JUDGE CLIFTON: Would you spell your name again, I didn't
16 write fast enough.

17 MR. BUHOLZER: B-U-H-O-L-Z-E-R.

18 JUDGE CLIFTON: Thank you.

19 MR. BLAUFUSS: Good morning, Rob Blaufuss, B-L-A-U-F-U-S-S,
20 with the Dean Foods Company.

21 MS. TAYLOR: Good morning, Sue Taylor with Leprino Foods,
22 L-E-P-R-I-N-O.

23 MR. DeJONG: Good morning, James DeJong, D-e, J-O-N-G,
24 Dairy Policy Economic Analyst with Hilmar Cheese, dairy
25 farmer-owned manufacturer of cheese, whey, and milk powders.

1 MR. RAMIREZ: Good morning, Miguel Ramirez, R-A-M-I-R-E-Z,
2 with Leprino Foods in Denver, Colorado.

3 MR. ZOLIN: Good morning, Alan Zolin, A-L-A-N, Z-O-L-I-N,
4 representing Hilmar Cheese.

5 JUDGE CLIFTON: Where's Mr. Vetne?

6 MR. ZOLIN: Sleeping.

7 MS. HANCOCK: Nicole Hancock, Stoel Rives, representing the
8 California Producer Handlers Association and Ponderosa Dairy.

9 MR. LAI: Good morning, Victor Lai, V-I-C-T-O-R, L-A-I,
10 with Producers Dairy Foods, a member of the California
11 Producers Handlers Association, one of the Proponents for
12 Proposal Number 3.

13 MR. VANDENHEUVEL: Good morning, Rob Vandenheuvel,
14 V-A-N-D-E-N-H-E-U-V-E-L, here on behalf of Milk Producers
15 Council.

16 MR. MILTNER: Good morning, Ryan Miltner, M-I-L-T-N-E-R,
17 Attorney for Select Milk Producers.

18 JUDGE CLIFTON: And just in time, Rachel Kaldor.

19 MS. KALDOR: Rachel Kaldor, R-A-C-H-E-L, K-A-L-D-O-R,
20 Executive Director of Dairy Institute of California.

21 JUDGE CLIFTON: Is there anyone who has not yet come to the
22 podium who would like to be introduced? There is not. Is
23 there anyone who has not yet come to the podium who expects to
24 testify today? There is not.

25 Let us go ahead with preliminary matters, including any

1 announcements, beginning with those from the USDA.

2 MS. MAY: Laurel May with USDA. Something tells me that
3 people were tired of my morning announcements because I cannot
4 find any of my cheat sheets. So you guys know all the basic
5 stuff. And that, for instance, we have a court reporter who is
6 taking the transcripts, and that those and the exhibits are
7 available on our website about two weeks after the end of each
8 hearing week, so you can look for those. And as always, we are
9 broadcasting this live, and you can find the link for that at
10 www.ams.usda/live.gov. You know all this stuff, so it is not
11 really necessary.

12 Yesterday at the end of the day we had Dr. Schiek and
13 Mr. Fish on the stand, and I think they are going to be coming
14 back today, but not until after we hear from Mr. Stettler and
15 Mr. Buholzer? Correct?

16 And the only other announcement that I have is that
17 next week we will be moving this hearing to the Piccadilly Inn
18 at the Airport, not to be confused with the Piccadilly Inn over
19 by the University. And on Veteran's Day, which is Wednesday of
20 next week, we intend to go ahead and keep on keeping on, so
21 plan to be there.

22 JUDGE CLIFTON: I'm so pleased we were able to do that.
23 Everyone wants to finish while we're here this trip in
24 November, and it would be a shame if we didn't use that day and
25 were shy by one day and had to come back in December. So I'm

1 very pleased that it's been approved for us to work on
2 Veteran's Day. And I think that's a way to honor our veteran's
3 in addition.

4 The docket number for this proceeding, as known in the
5 Hearing Clerk's office in the U.S. Department of Agriculture
6 is, in brackets [AO] 15, docket number 15-0071. Other
7 preliminary matters or announcements?

8 MR. ENGLISH: Chip English. Good morning everyone, again.

9 So actually, Mr. Fish is not here, I think we completed
10 him yesterday. Regardless, we are going to start with a panel
11 of two Wisconsin Master cheese makers, and so that's
12 Mr. Buholzer from Klondike and Mr. Stettler from Decatur Dairy.
13 And so they are going to be testifying as a panel. Then we'll
14 bring Dr. Schiek back to finish whatever cross-examination and
15 what I now expect to be modest redirect.

16 At which point, assuming Mr. Vetne has joined us, he
17 will be testifying Part 2 on pricing. We do expect another
18 fluid processor, Mr. Mike Anthony for Unified Grocers, he's
19 coming in, we hope, on the same flight that, well, different
20 day, but the same flight that Mr. Dolan was on yesterday, so he
21 would, I think, best be on right after lunch if we can work
22 that out.

23 If we get all of those done, we would then move to
24 Mr. Blaufuss, Part 3, on pricing. And I am prepared, if those
25 all get done, we have two relatively short pieces, Part 4 and

1 Part 5 from Mr. Zolin, testifying first on Section 13, and last
2 on Section 86, which is payments to the Market Administrator on
3 milk, but that would be if we get that far.

4 I do want to remind everybody that we are anticipating
5 Dr. Mark Stephenson to be here tomorrow, and as part of that
6 reminder, two important caveats: Number one, he will not be
7 testifying for or against any proposal but presenting
8 information for the record. And second, again, the last I had
9 heard from him, he does not anticipate speaking about any study
10 he did for the cooperatives. And as long as that's what
11 happens, we commit from our side entirely, that we will not be
12 asking any questions about that study.

13 I don't know, because I have not seen how extensive his
14 testimony will be, and, therefore, it is somewhat difficult for
15 me to predict how long he'll be on the stand. In fact, I would
16 safely say I have no idea. We do have some other witnesses
17 that I can discuss later tonight, hopefully at 4:55, about that
18 we would have, if, for some reason, he's not on for the whole
19 day. So we will have other witnesses regardless. And I still
20 anticipate as of the fact that Dr. Schiek is going to carry
21 over from yesterday, I don't think changes my forecast of
22 yesterday that except for two witnesses that may, one
23 definitely and one possible for next week, that we are done
24 with our case-in-chief no later than the morning break on
25 Friday.

1 JUDGE CLIFTON: That's just excellent. I'm pleased by
2 that.

3 I would ask all of you to help me make sure that we do
4 have Mr. English have his opportunity to give us a preview for
5 tomorrow before we get to 5:00. I know we cut it extremely
6 close yesterday. He arrived with a minute to spare, and that's
7 just too tension-producing. So I'm glad we got Mr. Fish done
8 so that he didn't have to stay another day, that was my
9 objective and so we did it. But let's all try to make that not
10 quite so nerve-wracking as yesterday.

11 And Mr. Hollon, would you come forward and identify
12 yourself?

13 MR. HOLLON: Good morning, Elvin Hollon, Dairy Farmers of
14 America, supporter of Proposal Number 1, E-L-V-I-N,
15 H-O-L-L-O-N.

16 JUDGE CLIFTON: Thank you. Are there any preliminary
17 matters? There being none, I would invite the two gentlemen
18 who will testify as a panel to come forward, this would be
19 Mr. Stettler and Mr. Buholzer, I'm not saying it correctly
20 but --

21 MR. BUHOLZER: You did good.

22 JUDGE CLIFTON: Close enough, I moved one chair out of the
23 way so it would be easier to get up the stairs, but you will
24 need to move it back. And I'm going to swear you in in a
25 seated position, and I'll swear you, swear you in together, but

1 I'll ask each of you to state your name when you say yes.

2 So let me begin by having each of you raise your right
3 hand, please.

4 Does each of you solemnly swear or affirm under penalty
5 of perjury that the evidence you will present will be the
6 truth?

7 MR. STETTLER: I do.

8 MR. BUHOLZER: I, Steve Buholzer, do.

9 MR. STETTLER: I, Steve Stettler, do. Forgot that already.

10 JUDGE CLIFTON: Very fine. And this, Mr. Steve Buholzer,
11 would you again spell your name, including your first name?

12 MR. BUHOLZER: S-T-E-V-E-N, B-U-H-O-L-Z-E-R.

13 JUDGE CLIFTON: And Mr. Stettler, if you will spell, state
14 and spell your full name, or your first and last name.

15 MR. BUHOLZER: Steve Stettler, S-T-E-V-E, S-T-E-T-T-L-E-R.

16 JUDGE CLIFTON: Good. Now you can experiment a little bit.
17 You saw how clearly Mr. Stettler's voice came through. You may
18 actually -- I know particularly when you are reading your
19 statement you have to be able to see the paper, and I think the
20 mic can be kind of to the side of your mouth rather than
21 directly in front and it will still pick you up. All right.

22 We are distributing two documents. Mr. English, what
23 do we have?

24 MR. ENGLISH: We have a statement on the letterhead of
25 Klondike Cheese Company, which is obviously Mr. Buholzer's

1 testimony, and I'm gonna ask that that be marked. That is a
2 three-page statement with two pages of attachments, so it is
3 five pages in total.

4 JUDGE CLIFTON: All right. I think that will be
5 Exhibit 124. Am I correct, Ms. Frisius? All right. That will
6 be Exhibit 124.

7 MR. ENGLISH: And then Mr. Stettler has a two-page
8 statement and one page exhibit for three pages that I would ask
9 to be marked as Exhibit 125, your Honor.

10 JUDGE CLIFTON: Very fine. I'm marking mine accordingly.
11 Exhibit 125.

12 (Thereafter, Exhibit Numbers 124 and 125,
13 were marked for identification.)

14 JUDGE CLIFTON: Raise your hand if you need a copy of
15 either Exhibit 124 or Exhibit 125. It appears everyone has
16 one. Good. All right.

17 As we distribute these, if you have any left over and
18 can put them on the back table, that would be great.
19 Mr. English, you may proceed.

20 DIRECT EXAMINATION

21 BY MR. ENGLISH:

22 Q. I think it will be easier if I just have them
23 individually read Exhibit 124 and 125 in the record, and then
24 I'll have additional questions of direct.

25 So, Mr. Buholzer, if you could go first.

1 MR. BUHOLZER: Hello, my name is Steve Buholzer. My
2 brothers and I and our children own Klondike Cheese Company.
3 It is a midsize cheese factory located in Monroe, Wisconsin.
4 Klondike was established in the late 1800's as a co-op. In
5 1925, my grandfather, Ernest Buholzer, was hired as a, by the
6 co-op as a cheese maker. In 1947, my father Alvin and my
7 mother Rosa took over management of the co-op. In 1973, our
8 family bought the co-op. Over the years we have produced a
9 variety of cheeses to try to stay profitable. Klondike Cheese
10 Company currently manufactures traditional Feta, flavored Feta,
11 brick, Muenster, and Havarti cheeses, and most recently Greek
12 yogurt.

13 In 2001, Klondike expanded business by constructing a
14 new cheese manufacturing facility and installing a
15 computerized, fully-automated coagulator. With the addition of
16 the coagulator and the advanced technology, Klondike has more
17 than doubled its production of Feta to meet the growing demand
18 of this specialty cheese. In 2013, Klondike expanded again to
19 produce Greek yogurt.

20 In the 1940's, we produced four wheels of Swiss cheese
21 per day. Today we produce over 125,000 pounds of cheese a day.
22 In the 1980's, we were a small family business with eight
23 employees, now we have 162 employees. We have grown from 10
24 patron farms to 75. Our current patrons are larger and produce
25 more milk than our earlier patrons. We have gone from

1 processing 20,000 pounds of milk per day to one million pounds
2 of milk per day. Klondike Cheese currently sells -- Klondike
3 Cheese Company currently sells cheese and yogurt to many
4 national retailers and food service distributors. Our produce
5 mix is 75 percent food service and 25 percent retail. We sell
6 our own Odyssey branded product, as well as a private label for
7 customers.

8 We are located seven miles from the nearest
9 municipality and therefore, have to process our own waste
10 water. In 2006, we upgraded our waste water facility at a cost
11 of \$3.9 million and ongoing operation costs of \$300,000 each
12 year. Our waste water treatment plant is an anaerobic and
13 aerobic pretreatment system. We spread the treated water on
14 100 acres of land that we own. Alfalfa is grown and harvested
15 on the land by local farmers. Hydraulic loading is an issue
16 for us. We are limited in the amount of waste water we can
17 produce per day due to our limited acreage. There is no
18 adjacent land for purchase that would allow us to expand.

19 JUDGE CLIFTON: Now, when you talked about the waste
20 water you said produce, which is probably true, but the word
21 you have it in your statement is "processed", so what you can
22 process limits the amount you are allowed, or could deal with
23 if you produce it.

24 MR. BUHOLZER: That's all we can deal with, correct.

25 JUDGE CLIFTON: Okay.

1 MR. BUHOLZER: Yeah. Due to these land constraints --

2 MR. ENGLISH: Actually, I think you skipped "there is no
3 adjacent land" I'm sorry.

4 MR. BUHOLZER: Oh, I didn't get to that, I'm sorry.
5 There's no adjacent land for purchase that would allow us to
6 expand.

7 Due to these land constraints and tighter DNR
8 requirements, we are in the planning stages of an upgrade to a
9 higher rate system, at an estimated \$3 million. This will
10 allow us to expand our cheese and yogurt production only, but
11 will not allow us to expand into whey drying.

12 For a small to midsize cheese manufacturer, the demands
13 of our whey stream have changed dramatically. In the 1960's,
14 all the whey went back to local farms to be used as hog feed.
15 As more farmers got out of the hog business, the whey started
16 to become a burden. Klondike put in equipment to first ship
17 warm whey to a drying facility for animal feed. A few years
18 later we upgraded to cool the whey and were able to ship to a
19 plant that made whey protein concentrate. In 1984, we
20 installed our first ultra-filtration system. This allowed us
21 to sell WPC 34 to a neighboring whey processing facility in
22 order to gain revenue. At that time, the permeate was spread
23 on the land as fertilizer. In 2004, we installed a reverse
24 osmosis system for the permeate so that we could increase the
25 solids and sell it to a neighboring processor to increase our

1 revenue. Our whey processing capabilities are limited by our
2 production of Feta cheese. Feta cheese produces a higher acid
3 whey that must be blended with other whey in order to be dried.
4 This fact, along with our limited waste water capacity, only
5 allows us to sell liquid products to a larger whey processing
6 facility, thus, limiting the amount of revenue we can generate.
7 At this time, Klondike Cheese has no other options to recoup
8 any additional revenue from its whey stream.

9 The issue is the other solids milk price is based on
10 the dry whey price, which doesn't accurately reflect our whey
11 revenue. So there are months that Klondike Cheese cannot earn
12 revenues on concentrated whey and permeate that meet the whey
13 value in the Class III milk price. This will be demonstrated
14 in the attached spreadsheet. The deficit hinders our ability
15 to invest in our operation, in the face of ever-increasing
16 costs brought on by buyer demands, food safety requirements,
17 environmental regulations, and overheads.

18 Thank you.

19 MR. ENGLISH: Mr. Stettler, your turn, Exhibit 125.

20 MR. STETTLER: I have a little shorter story.

21 I am Steve Stettler, President of Decatur Dairy, Inc.,
22 in Brodhead, Wisconsin. We have been a cooperative since 1942
23 and were started by seven farmers to turn our milk into cheese
24 and market it.

25 Decatur Dairy has seen several changes over the years

1 and has grown over the years to supply the needs of its
2 customers. We have went from making Swiss cheese to Muenster,
3 brick cheese, farmer cheese, and now we also make Havarti,
4 Gouda, specialty Swiss, and several cheese curds. Decatur
5 Dairy makes several smaller batches of cheese for its retail
6 store producing its own Colby, Cojack, Monterey Jack, and
7 several smoked cheeses.

8 Decatur Dairy has sold its whey since the early 1970's
9 to processors to take the protein out of the product. Decatur
10 Dairy has always sold warm whey and has whey processing plants
11 close to the facility.

12 Back in the 1970's, Decatur Dairy was paid a flat rate
13 for whey. The rate being .14 to .16 cents on solids, and that
14 did not change until 2012 when the rate changed to a percentage
15 of dry whey. Now, I may add to the, to my testimony, also,
16 that these are modest numbers .14 to .16 cents. When I go back
17 we are actually down to .04 to .06 cents, so that number has
18 varied, but it had never gone over .16 cents.

19 Dry whey pricing hurts us because we only sell wet
20 whey. And for Decatur Dairy to build a dryer is out of the
21 question.

22 My cooperative is in favor of changing the way whey is
23 priced in milk pricing. Decatur Dairy sells its cheese, cream,
24 and whey and that is how we pay for our milk and the milk price
25 is based. When the other solids price gets raised, we pay more

1 for solids than the waste solids price can make up for.
2 Decatur Dairy feels our milk price will not be lower because of
3 this, but will be more competitive and fair.

4 The cooperative has had many discussions on whey and
5 how to sell it, and if it makes sense to invest in the
6 equipment to process. There are so many issues for us to
7 invest in processing equipment for whey. Waste water is a big
8 issue, as whey equipment would add another 30,000 gallons of
9 waste water in just cleaning the equipment, and if you want to
10 reuse the water, there would also be the redesign of piping to
11 handle the water, and cleaning those lines add more waste
12 water, also. Waste water improvements to handle this amount of
13 water and the byproducts of permeate would be as high as
14 \$2 million, and that really doesn't have a payback.

15 Decatur Dairy would also have to expand the building
16 for equipment, and right now land is not available for building
17 additions. The cooperative could easily be \$3 million plus in
18 investments if whey investment was looked at.

19 The other way whey pricing is being done, the money
20 that is being paid for whey really doesn't cover the investment
21 if it is not changed. In the past, if you invested in whey
22 equipment at the right time, it would pay for itself because it
23 did not have a huge impact on milk pricing, and other solids
24 did not have the high value and the demand, the demand was not
25 as great as it is today. Unfortunately, we did not have the

1 space or facility to invest in the equipment.

2 Our cooperative strongly encourages a review of this
3 pricing. Decatur Dairy has been short on covering milk costs
4 for the last five years, with 2012 being a negative .5386
5 cents. In 2013, it was a negative 5291. In 2014, we were a
6 negative 7114, and in 2015, there was a negative of 6 cents and
7 three quarters. The only months in those years that the
8 cooperative was in the black and covering their cost was 2015.
9 It was July 2015, with a positive 3.58 cents. August 2015 we
10 were a positive 2.735 cents, and in September we were positive,
11 I take that back, I made a mistake there. In August 2015 we
12 were a positive 27 cents .35, and in September we were a
13 positive 46 cents .49.

14 Decatur Dairy would like to invest in whey and do the
15 processing the correct way, but it just doesn't work with the
16 current system. We all know the demands for solids will come
17 back and milk price will reflect that for the farmer. The
18 cooperative would like to see a system where the price of whey
19 would generate some profits to reinvest in whey processing, as
20 it is a huge expense. Thank you.

21 BY MR. ENGLISH:

22 Q. The first thing, Mr. Stettler, going back to the
23 paragraph when you were giving the numbers. First of all, all
24 those numbers were in cents, and so when you said 5386 it was
25 53.86 cents, correct?

1 A. They are in cents, yes.

2 Q. And if you go to 2014, looking at your chart and
3 looking at that, you read it correctly, I believe, and you read
4 it differently from the text. You read 71.14 cents, what's
5 written there is 7.114, so if the zero should be struck on
6 Exhibit 125, correct? It's really 0.7114, correct?

7 A. Yes, .07114.

8 Q. So I'd ask that the zero after the period for 2014 be
9 struck so that it reads 0.7114.

10 JUDGE CLIFTON: Now, the two of you did not just now say
11 the same thing as each other, so I want to make sure what this
12 is supposed to be. Are you looking at a chart and getting it
13 from there, Mr. English?

14 MR. ENGLISH: Yes. And I wasn't going to talk about the
15 chart yet, I was trying to fix this first. But I guess if you
16 look at page 3, Mr. Stettler, and the audience, at 2014, and
17 the last column for 2014, which is the second to the last line
18 in red, it's a negative 0, it is dollar sign, \$0.7114, correct,
19 Mr. Stettler?

20 MR. STETTLER: Correct.

21 BY MR. ENGLISH:

22 Q. Okay. And that's the number you meant to have on
23 Page 2 of your testimony, correct?

24 A. Correct.

25 Q. Okay. And, in fact, I think he actually read it that

1 way, your Honor, I think he read it correctly.

2 JUDGE CLIFTON: All right.

3 MR. ENGLISH: So the line that says 2014 was a negative
4 0.07114, really should read, 2014 was a negative 0.7114; is
5 that correct, Mr. Stettler?

6 MR. STETTLER: Correct.

7 JUDGE CLIFTON: Thank you both. Ms. Frisius, on the third
8 line down from the next to the last paragraph on page 2, we're
9 going to strike a "0" so that the phrase that begins with
10 "2014" will say, "2014 was a negative 0." now we strike a
11 "0.7114." All right. Mr. English?

12 MR. ENGLISH: Thank you.

13 JUDGE CLIFTON: Now, are you through with going over those
14 numbers, because I would like him to do them one more time.

15 MR. ENGLISH: I was done, but if you want him to go through
16 them again, your Honor, I'm happy to do that.

17 JUDGE CLIFTON: Okay. So let's look at those again and
18 express them clearly in cents. So -- so we're still in that
19 next to the last paragraph on page 2. We're starting with
20 2012, and read that again, and go slowly so that we can capture
21 in our minds how many cents were lost. So 2012?

22 MR. STETTLER: With 2012 being a negative .5386 cents.

23 JUDGE CLIFTON: Now, it is -- if you put in the point it is
24 part of a dollar.

25 MR. STETTLER: I don't know how you want to me to read it.

1 JUDGE CLIFTON: That sounds great. 53.86 cents sound
2 great. Now, what it's written as, is as parts of a dollar.

3 MR. STETTLER: Correct.

4 JUDGE CLIFTON: But you don't have to read it that way, you
5 can read it like you just did.

6 MR. STETTLER: All right.

7 JUDGE CLIFTON: So start again, then, with 2012.

8 MR. STETTLER: 2012 being a negative 53.86 cents; 2013 was
9 a negative 52.91 cents; 2014 was a negative 7.114 cents.

10 JUDGE CLIFTON: Or 71.14.

11 MR. STETTLER: No, it is 7 --

12 MR. ENGLISH: We struck the zero there, remember.

13 MR. STETTLER: Yeah, we struck the zero. This is a point,
14 my paper says .07, which would be 7 cents.

15 MR. ENGLISH: I understand that. But I thought we just
16 went through and you agree that if you look at page 3 of your
17 testimony, of which is the exhibits.

18 MR. STETTLER: It is .0

19 MR. ENGLISH: It is 0.7

20 MR. STETTLER: I was reading it off the paper.

21 MR. ENGLISH: Everybody else struck the zero, we need you
22 to strike the zero, too.

23 MR. STETTLER: I didn't do to that. 2014 was a negative
24 .7114.

25 JUDGE CLIFTON: Okay. Now, just, just tell me --

1 MR. STETTLER: 71.4 cents.

2 JUDGE CLIFTON: One more time, 71.14?

3 MR. STETTLER: 2014 was a negative 71.14 cents; 2015 was a
4 negative 6.75 cents.

5 JUDGE CLIFTON: So every single one of those five years was
6 a loss?

7 MR. STETTLER: Correct.

8 JUDGE CLIFTON: All right. And then continuing on with
9 your next sentence.

10 MR. STETTLER: The only months in those years that the
11 cooperative was in the black and covering their costs was
12 July '15, with a positive 3.58 cents. August '15 was a
13 positive 27.35 cents, and September was a positive 46.49 cents.

14 JUDGE CLIFTON: Good. I'm totally happy. Thank you.
15 Mr. English?

16 MR. ENGLISH: Thank you.

17 BY MR. ENGLISH:

18 Q. So let me take you, first separately, and then at some
19 point you can answer questions whoever you want to have answer
20 the questions, but let me take you first separately through
21 your exhibits and ask a few other questions.

22 So let me start with you, Mr. Buholzer. Can you tell
23 us a little bit more about yourself? We all have that
24 privilege, and, well, actually, the lawyers don't, but
25 everybody else on the witness stand has had the privilege, and

1 everybody is a little shy. So why don't you tell us a little
2 about who you are, and your educational background, and your
3 work background.

4 A. I'm a lifelong cheese maker. My brothers and I -- I
5 got two brothers, Ron and Dave, I'm the youngest of the three.
6 We grew up in the house, which is common in the small cheese
7 factories of Wisconsin. There was a house upstairs where mom
8 and dad lived, so I grew up, you know, in the, around the plant
9 learning the business. I graduated from high school in 1970,
10 and my brother got back from Service. He was in Vietnam the
11 same year, and I went to one year of college and came back.
12 And if we wanted to join mom and dad in business, but our co-op
13 was, it was a small. I don't know, we maybe had ten or twelve
14 farm owners at that time, they did not want to -- we needed to
15 expand to feed potentially four families instead of one family.
16 And the farmers didn't want to go into debt, so they agreed to
17 sell the co-op to mom and dad and my two brothers and myself.
18 So we formed a corporation at that point and we've grown to the
19 point now, where I'm third generation in the business, and now
20 the fourth generation which is my son, my nephew, my son-in-law
21 and my daughter-in-law are all working at the plant in a full
22 time basis.

23 And we have grown a lot. We made entirely Swiss cheese
24 until 1970, I think, dad made his last Swiss. And then we have
25 made different cheeses. We have made cheddar cheese,

1 Mozzarella, almost anything that -- we were never afraid to
2 change to find a market to stay competitive. And, you know,
3 even though we weren't a co-op and necessarily answering to the
4 farmers like a co-op does, it's still in, it's still really
5 competitive for milk. If you don't have a good milk price,
6 there's no reason the farmer will, doesn't move to a better
7 pricing structure, which I don't blame them for that.

8 So we have been real proactive in trying to do
9 different things to keep our company going and growing. And we
10 have had nice growth. Feta cheese has been a really good thing
11 for our company, but it does present problems with the whey
12 processing, as I mentioned in my testimony.

13 Q. All right. Are you a master cheese maker?

14 A. Yes, I'm a Wisconsin master cheese maker.

15 Q. What exactly is that?

16 A. To be -- in Wisconsin we have a cheese maker's
17 licensing program. And to get that you have to apprentice for,
18 I don't know, what is that, a year, Steve? Or just -- just the
19 cheese maker's license.

20 MR. STETTLER: 10 or 12, no, it's one year.

21 MR. BUHOLZER: Yeah, to just get a normal cheese maker's
22 license is a one-year apprenticeship and then you have to pass
23 an exam. To become a master it is a ten-year apprenticeship,
24 and you have to take courses at UW Madison Center for Dairy
25 Research, and it is a really rigorous exam. And we're -- in

1 Wisconsin we're really proud of that Master Cheese Maker
2 program because it sets us apart and we believe it makes us
3 better cheese makers because of the, we can interact with
4 other, with our peers, and we get a lot of help from the
5 university if we have technical issues, and it's just been a
6 wonderful thing for us.

7 Q. Thank you. You have already said in your statement
8 that you have 162 employees, and I just want to make sure
9 that's throughout all your operations that might be, if you
10 have any inter-related companies or anything, that's all the
11 employees you have.

12 MR. BUHOLZER: Yes, that's correct. All of our facilities
13 located in one place in Monroe there.

14 MR. ENGLISH: All right.

15 JUDGE CLIFTON: One place in what?

16 MR. BUHOLZER: Monroe, Wisconsin.

17 BY MR. ENGLISH:

18 Q. So I want to ask a few questions for clarification from
19 page 2 of your statement. You said your waste water treatment
20 plant is an anaerobic and aerobic pre-treatment system. We
21 haven't had those terms in the record yet, so could you tell us
22 what that means?

23 A. Yes. The anaerobic system, it consists at this point,
24 we capture our floor water, we have to pump it because the
25 cheese factory's at the bottom of the hill and the only flat

1 spot we have is on top of the hill. So we have to pump it up
2 into, we have got three holding lagoons, two 500,000-gallon
3 anaerobic, and anaerobic means you don't want air, the bugs
4 that digest your waste are -- I'm not a scientist -- but bugs
5 that don't like oxygen. So that is to dissolve our sludge
6 somewhat.

7 It goes from those two 500,000-gallon holding lagoons
8 to a 11 million gallon aerobic lagoon. And the aerobic lagoon
9 has, we have got five, 20 horsepower aerators that we, you
10 know, pump oxygen in, and a different anaerobic process takes
11 over, and it works similar to a municipality. But a
12 municipality takes the BOD and all the other things down to
13 zero so they can go to a stream with it. We only have to drop
14 it down to a low level, which I don't know the exact number.
15 And then we irrigate on about hundred acres of farmland that,
16 and even Wisconsin with our short growing season than here in
17 California, we're able to always get four real nice crops of
18 Alfalfa, some years five depending on how much the rain gets in
19 our way as far as harvesting. So then we harvest those crops,
20 it goes back to local farmers to be fed to the dairy cattle,
21 who ship us milk again. So it is a kind of a self-sustaining
22 thing.

23 Q. And I'm going to apologize, but you used the letters
24 BOD, and so if you could just describe that for us?

25 A. Oh, Biological Oxygen Demand.

1 Q. Okay. In the middle of your page, and I'm pretty sure
2 I know what it is, but so somebody doesn't have a question
3 sometime later, you said DNR requirements, is that Wisconsin
4 Department of National Resources?

5 A. That's correct.

6 Q. So that's a regulatory demand?

7 A. Correct.

8 Q. I think we had some discussion of this issue. Turning
9 over to page 3, when you say prior to 2004 that permeate was
10 spread on the land, what is the permeate?

11 A. When you, cheese whey has basically two components,
12 protein and lactose. When we run it through an
13 ultra-filtration in order to take the protein out, you reject
14 the lactose. The lactose is the permeate stream.

15 Q. Okay. And you have discussed the higher acid whey, and
16 again, I think we have heard some testimony about this. But
17 why must it be blended with other whey in order to be dried?

18 A. You know, I'm not an expert on drying whey, but we
19 actually looked into a putting in a small dryer just to run our
20 own facility. And for some reason when the acidity gets
21 higher, which is a lower PH, it just, it wants to ball up in
22 the dryer, plug nozzles, there's just, from all the consultants
23 we talked about, it's just, it's a mess. So the larger whey
24 plants where maybe my stream, and at Klondike, our Feta whey is
25 the bigger of our two streams. Our brick, Muenster, and

1 Havarti whey would be fine, it would dry great, but it's not
2 enough to blend the Feta whey up. So when we send it to a
3 larger facility that's maybe processing millions of pounds of
4 whey a day, they can blend it up and they don't notice it I
5 guess is what happens.

6 Q. Does that affect the price you can get for it, if you
7 know?

8 A. Not -- I don't think too terribly bad. You know, it's
9 always in, because I have to negotiate the contract every year
10 or two, and it always comes up in the conversation.

11 Q. Okay. So it's affecting it in some way and not
12 positive, correct?

13 A. It definitely is not positive.

14 Q. Again, on clarification, and actually this is for both
15 of you, for you, Mr. Buholzer, on page 3; and for you,
16 Mr. Stettler, on your first page, when you discuss how whey is
17 priced in milk pricing, you're referring to the Federal Milk
18 Order pricing. Is that what you mean?

19 A. Correct.

20 Q. Okay. And that was yes for Mr. Buholzer. Is that also
21 yes for Mr. Stettler?

22 MR. STETTLER: Yes, correct.

23 Q. All right. So Mr. Buholzer, if we now can turn to your
24 pages 4 and 5, should we talk first about page 5, which is
25 listed whey operating cost, or should we talk about Klondike

1 Cheese Whey P and L?

2 MR. BUHOLZER: It's up to you.

3 Q. All right. Well, why don't you tell us what you are
4 showing here and walk us through one month of one year.

5 A. Okay.

6 Q. So well, I guess it is all 2014. So do you want to
7 walk us through January of 2014 and tell us what it is you are
8 showing us here?

9 A. All right. In January '14, on the top column, it is
10 showing that we brought in 11,526,621 pounds of milk, and then
11 the next column is the pounds of milk fat, which is the pounds
12 of milk times the fat test. And the next column, the pounds of
13 protein, which is pounds of milk times the protein test. And
14 the next column is the milk other solids, which is the same
15 equation.

16 And then we use nonfat dry milk in our Feta cheese,
17 which is the next columns over to raise solids so we can get
18 more throughput through our automated cheese making system. So
19 in January we purchased 467,185 pounds of nonfat, nonfat
20 standard commodity. So there's an estimated protein value and
21 an estimated other solids value, which I don't know where
22 that's published, but I know it's published someplace.

23 And so those are those numbers. And then the next
24 column is the Federal Milk Marketing other solids price per
25 pound, and then the next column is the calculated other solids

1 cost. And if you go to the bottom table, in January it shows
2 my revenue. My UF whey sales, that could actually read UF
3 protein, because we take the whole whey and then we run it
4 through the UF, and we get two components. The first column is
5 the protein and the other column is the permeate, so that maybe
6 should have been labeled different.

7 JUDGE CLIFTON: Let us do that now. Ms. Frisius, on
8 Page 4, the table, we're in the bottom section and we're just
9 looking at the names of the columns. And in the bottom
10 section, the top first category says UF whey sales. We'll
11 strike "whey" and insert "protein". And just so we're clear,
12 that is just the protein that's taken out of the whey.

13 MR. BUHOLZER: That's correct.

14 JUDGE CLIFTON: Okay.

15 MR. BUHOLZER: And ours is sold at 34, WPC, which is whey
16 protein concentrate, 34 percent.

17 JUDGE CLIFTON: Then maybe I shouldn't have stricken the
18 whey.

19 MR. ENGLISH: Would it be UF whey protein sales?

20 MR. BUHOLZER: Whey protein concentrate, possibly.

21 MR. ENGLISH: UF whey protein concentrate sales?

22 MR. BUHOLZER: At 34 percent if you want to be totally
23 accurate, because, you know, we could be making 60 or we could
24 be making 80, but we're making 34.

25 MR. ENGLISH: I think we want to be as accurate and

1 complete as possible, but we want it to be your words and not
2 mine, and not even Judge Clifton's.

3 MR. BUHOLZER: SO let's call it whey protein concentrate 34
4 percent.

5 JUDGE CLIFTON: Okay. So what we're inserting before the
6 word "protein" is "whey". Whey protein 34 percent concentrate
7 sales.

8 MR. BUHOLZER: Sales.

9 JUDGE CLIFTON: Do you want it again, Ms. Frisius? You are
10 good? Thank you.

11 MR. BUHOLZER: Okay. So in January we sold, and the second
12 column is the price I received. And so then it came to the
13 pounds, times the price, and --

14 MR. ENGLISH: So just to be clear in the record, because
15 what you are saying is for January you had 278,120 pounds,
16 correct?

17 MR. BUHOLZER: Yep.

18 MR. ENGLISH: And you got a price of \$1.5456, correct?

19 MR. BUHOLZER: Correct.

20 MR. ENGLISH: And that's the total revenue then of 429,852,
21 correct?

22 MR. BUHOLZER: That's also correct.

23 BY MR. ENGLISH:

24 Q. All right.

25 A. The other stream is the whey permeate, which is the

1 lactose stream. And we had 504,000 pounds -- 504,312 pounds,
2 and in January I got 10 cents a pound of solids, and for a
3 total revenue of \$50,431. And the next column is my total whey
4 revenue of \$480,283. The next is the Federal Milk Marketing
5 Order Class III other solids cost of for my milk supply was
6 \$396,752, I had a processing cost of \$25,905, for a net margin
7 of \$57,626, or the next column is 49.99 cents per hundredweight
8 on my milk.

9 Q. Which just happened to be the one month of the whole
10 year that you actually made money?

11 A. That's correct. All the rest of the other 11 months
12 were all negative for me.

13 Q. So now, is the processing cost on page 4 derived in
14 some way from page 5 is that where we would go?

15 A. Yes, it is.

16 Q. So could you describe where your processing cost comes
17 from?

18 A. Well, the first column is labor. It takes, you know,
19 two, at least two guys, two full-time people. And with, you
20 know, with insurance and overhead, we came up with \$112,000.
21 The cleaning chemicals came directly from, we do biweekly
22 chemical inventories and usage rates, so that's a direct
23 number. The electric cost is, you know, we have got a lot of
24 electricity going in our plant, so what I did to derive this
25 cost is, our whey processing system is all off a, of one, it's

1 a separate set of motor control center parts. So we put, we
2 took an amp draw when everything was running, you know,
3 normally we put an amp draw, and then we -- we -- our
4 electricity is based on kilowatts. Our rate is 8 cents a
5 kilowatt hour, so I took the amps, times the volts, and that
6 gives you the kilowatts. And I came up with, and then times
7 the hours that the machinery runs, and I came up with the
8 \$46,280.

9 The waste water costs those are -- and so the
10 electricity is a little bit of an estimate. But, if anything,
11 I was conservative on it because I did that recently in the
12 summer months when it is really hot outside, because the
13 cooling takes so much more load, I'm sure they would be higher
14 than that, but I wanted to make sure I was conservative on
15 this. The waste water costs are, again, direct numbers that we
16 can, in our booking system that we have, depreciation, again,
17 is a direct number that we have.

18 Membrane replacement. Ultra-filtration system and a
19 reverse osmosis system is just filters and pumps, and the
20 filters have a finite life and they are expensive. And the
21 three-year life is actually for the RO. And that's being
22 pretty generous. We get better life than most people, but one
23 of the reasons is, we're a five-day plant, not a seven-day
24 plant. So, you know, a seven-day plant, and we're also, you
25 know, maybe 18-hours instead of 24-hours. So I get little bit

1 longer life than some companies. And same with the next column
2 is the 1.5, that was actually the ultra-filtration membranes,
3 so I think I was generous on those costs.

4 And then so we got the total of \$324,000 and divided it
5 by the 12 months for \$27,016 a month, or 9.31 cents per pound
6 of -- Tammy, our controller, put this in as UF solids. So I
7 don't know if that's, I got to be honest with you, I don't know
8 if that's including the permeate on that 9 cents, but I'm
9 looking more at the \$27,000 a month, actually.

10 Q. So to be clear, the three year membrane life is for the
11 RO membrane?

12 A. Correct.

13 Q. And the one and a half year membrane life is for the UF
14 membrane?

15 A. That's correct.

16 Q. Okay. So that 9.31 cents would be carried back to the
17 processing cost against the pounds, correct?

18 A. That's correct.

19 Q. Okay. So even if you didn't have that processing cost,
20 I was looking at your columns, and it looks like, other than
21 January and February of 2014, even if you didn't have the
22 processing cost, just the FMMO other solids cost would be
23 greater than the value that you receive for the total whey; is
24 that correct?

25 A. That's correct.

1 Q. Okay. Now, did you prepare, or was it -- was the
2 tables on pages 4 and 5?

3 JUDGE CLIFTON: I'm sorry, I'm not seeing that. So help me
4 see that.

5 MR. ENGLISH: All right. Your Honor, I was looking at the
6 bottom set of tables with the large all capital typed total
7 whey revenue, which is all in black. So it's, the one that
8 says total whey revenue. For instance, January is \$480,283.
9 Do you see that now?

10 JUDGE CLIFTON: Yes.

11 MR. ENGLISH: Okay. And I was comparing that column of
12 total whey revenue to only the next column, which is cost of
13 products sold, FMMO, OS for other solids cost.

14 JUDGE CLIFTON: Yes.

15 MR. ENGLISH: So I was excluding the next column, which is
16 the processing cost.

17 JUDGE CLIFTON: Yes.

18 MR. ENGLISH: And I was asking him to confirm with me that
19 if you just look at those two columns, total whey revenue in
20 the black and the FMMO other solids cost in the red, that other
21 than January and February, the FMMO other solids cost exceeded
22 the total whey revenue for every month March through December.

23 JUDGE CLIFTON: I see it now.

24 MR. ENGLISH: And you agree with that, Mr. Buholzer,
25 correct?

1 MR. BUHOLZER: That's correct.

2 MR. ENGLISH: Thank you for asking, your Honor.

3 JUDGE CLIFTON: Thank you.

4 MR. ENGLISH: When it comes to numbers, sometimes I move
5 very fast.

6 BY MR. ENGLISH:

7 Q. All right. Did you prepare or did you cause pages 4
8 and 5 to be prepared at your direction and control? Did you do
9 it personally or ask for somebody to do it who works for you?

10 A. Yes. Tammy Federoff, our controller, did it for us.

11 Q. Now, I'm sure you are going to be asked a couple of
12 other questions, and one of them that comes to my mind is, is
13 Klondike Cheese Company a pool plant?

14 A. Yes, we are.

15 Q. Have you always been a pool plant?

16 A. Yeah, well, many years.

17 Q. Okay. Before I turn to Mr. Stettler, is there anything
18 else you would like to add, and before I turn you over to the
19 further examination?

20 A. Not at this time.

21 Q. Terrific, sir. All right. Your turn, Mr. Stettler.
22 First, are you a master cheese maker?

23 MR. STETTLER: Yes, I am.

24 Q. Thank you. Second, unlike Mr. Buholzer, you didn't
25 disclose how many employees Decatur Dairy has. Can you tell us

1 how many employees it has?

2 A. I have 33.

3 Q. Okay. And I admit I got a little confused when you
4 were reading from the middle of the page, when you went off the
5 script and you said something about the rates. So when it
6 changed in 2012 to a percentage of dry whey, can you tell us
7 what a range is you have gotten since 2012?

8 A. Since 2012 we're on a percentage of dry whey. And we
9 are at 52, well, it's changed, I was at 55 now I'm at 52.5
10 percent of dry whey.

11 Q. So if it goes down, by definition, you are getting
12 less, correct?

13 A. Correct.

14 Q. So I want you then to turn to page 3. And if, you have
15 obviously already provided the conclusion of this for the years
16 2012, look at 2013. Do you want to correct here in the bottom
17 section under page 3, looks like there's an inverted number, it
18 says 2103 looking at the bottom of the page?

19 JUDGE CLIFTON: Where at the bottom, oh just the way the
20 year is expressed.

21 MR. STETTLER: Oh, yeah.

22 MR. ENGLISH: Do you want to change that from 2103 --
23 although we may still be here -- to 2013?

24 MR. STETTLER: 2013, yes.

25 JUDGE CLIFTON: Ms. Frisius, do you see where he is?

1 MS. FRISIUS: Yes.

2 BY MR. ENGLISH:

3 Q. All right. So you have already provided those numbers
4 as conclusions for the years and also for the months. So if
5 it's easiest, it's easier for me if you just go across the top
6 line, which is January 2012. Could you tell us what it is you
7 are showing here on this chart?

8 MR. STETTLER: Well, the first column is the Federal Order
9 price for other solids. The second column is the dry whey
10 price, published dry whey price, and then the third column is
11 52.5 percent of dry whey, which is what we get paid.

12 Q. Okay.

13 A. And then the fourth column is the Federal Order cost of
14 other solids, which is an estimated 5.6 percent other solids.

15 Q. 5.6 or 5.69?

16 A. 5.69 of other solids. So that's pretty much what we're
17 paying for our milk --

18 Q. Okay.

19 A. -- on other solids. So the next column is the value of
20 our whey. And then we subtract the Federal Order price from
21 our value of whey, and that's how we come up with the plant
22 other solids margin.

23 Q. All right. So the one thing I didn't immediately
24 follow is the column that is the whey sales value per
25 hundredweight at 5.69 percent. How is that derived? Is it

1 derived using the column of 52.5 percent of NDPSR whey, or how,
2 where is the 2.05?

3 A. The \$2.05 is figured, yeah, that's figured from the
4 55.5 dry whey. That, if you multiply it out times other
5 solids, that's what we're going to get.

6 Q. Okay. Now, you just said 55.5?

7 A. Well, the 52.5 is where we come up with the number, but
8 we use the same value on our milk solid at 5.69, and that's
9 where we come up with that value of \$2.05.4 cents.

10 Q. Now, unlike, Mr. Buholzer, you haven't done a
11 processing cost, correct?

12 A. No.

13 Q. Because you are not processing?

14 A. Correct.

15 Q. Okay. Do you have to pay to transport it or is this
16 the, is this the value at your plant that you get?

17 A. They pay me the value at my plant.

18 Q. Okay. So the transport is being carried by them; is
19 that correct?

20 A. Correct.

21 Q. So this is the net amount you get?

22 A. Yes.

23 Q. Do you have anything further that you would like to add
24 before I move the admission of the exhibits and turn you over
25 for further examination?

1 A. No, sir.

2 Q. Okay. Your Honor, I'm sorry, did you want to do
3 something?

4 JUDGE CLIFTON: I do have a question. Most recently you
5 have been in the black. Why would that be, if you know.

6 MR. STETTLER: Well, other solids have gone down. The
7 price of other solids have gone down, so that's the main
8 reason.

9 JUDGE CLIFTON: All right. And is that because it went
10 from 55 percent to 52 or it went, did it go down further?

11 MR. STETTLER: No, we're still at 52.5 percent.

12 JUDGE CLIFTON: All right. But the whey price that is
13 determined by the market is what went down?

14 MR. STETTLER: Our whey prices also went down, but so has
15 other solids.

16 JUDGE CLIFTON: Okay.

17 MR. STETTLER: So there's a there's kind of a balance right
18 now.

19 JUDGE CLIFTON: All right.

20 BY MR. ENGLISH:

21 Q. If the price of whey goes low enough, then the formula
22 doesn't work against you; is that point?

23 A. For me, if the price of whey goes lower, I'm actually
24 better off because I get 50 percent of the lower price. If the
25 whey price goes high, I actually lose. Where Steve would gain,

1 I would lose, because I only get 50 percent of the higher
2 number, where I don't -- I don't reap the benefits of dry whey
3 because I'm only getting a percentage.

4 Q. So if the function of the formula which you are being
5 paid, for your instance, that's different from what's happening
6 with Mr. Buholzer?

7 A. Correct. For my operation, I've known for several
8 years that I do better with a lower whey price.

9 Q. Okay. And just to be clear, you haven't included
10 October 2015 in this chart because we don't have those final
11 numbers yet; is that correct?

12 A. Correct. I don't have those.

13 Q. Okay. Any other clarifying questions you want to ask,
14 your Honor?

15 JUDGE CLIFTON: You know, I still don't understand why you
16 get, why you are better off when the price goes down. Because
17 I just see that you are paid a percentage, so I'm still
18 struggling with that.

19 MR. ENGLISH: Let me see if I can ask him some questions
20 and see if I can work that out.

21 JUDGE CLIFTON: Okay.

22 BY MR. ENGLISH:

23 Q. So the fourth column, which is FMMO other solids cost?

24 A. Correct.

25 Q. It's now down, if you look at September 2015, it's down

1 to 0.2646, correct? Which is 26.46 cents, correct?

2 A. Correct.

3 Q. Now, if we go up to the top, and just going to the top
4 because it's easiest, it's \$2.8632, so it is more than ten
5 times more in January of 2012 than it was for September of
6 2015, correct?

7 A. Correct.

8 Q. You get paid 52 and a half percent of the actual whey
9 price which factors into the other solids price, correct?

10 A. Correct.

11 Q. So 52 percent of a bigger number, actually leaves you
12 with a larger loss than 52 percent of a smaller number,
13 correct?

14 A. That is correct.

15 Q. Does that help, your Honor?

16 JUDGE CLIFTON: No, but as long as Dr. Schiek is following
17 it, I'm good.

18 MR. STETTLER: Well, if you look at -- if you look at
19 Column 5 where it turns to the black, that number is larger
20 than Column 4, that's what this, that's what the change is. So
21 the value, the value of my whey is more than the value of
22 solids in my milk.

23 JUDGE CLIFTON: That makes sense to me. Thank you.

24 MR. STETTLER: That's where the problem is, that's where
25 the problem is with the whole formula.

1 JUDGE CLIFTON: All right.

2 MR. ENGLISH: Meaning what? What -- expand, please.

3 MR. STETTLER: Well, when the value of whey gets that high,
4 it raises my other solids price. Where you look, I mean, we
5 were at \$2.86 at one point, you know, and now we're down to 26
6 cents. And in the early days of whey, there wasn't that much
7 value put on other solids, and that's why if you got into whey
8 business early, you could pay your equipment off. Where now,
9 as you can see, there's a value in the formula, so you have to
10 take that value for your whey and pay it to the milk.

11 JUDGE CLIFTON: That -- now I understand.

12 BY MR. ENGLISH:

13 Q. So again, going a little further with that. When
14 Federal Order Reform, based on 1996 data, was finalized in
15 1999, you didn't see any kind of values for whey like you have
16 seen in recent years; is that correct?

17 A. Without looking, I would -- I would suspect not, but
18 without looking at it I can't answer that.

19 Q. All right. I don't want to -- that's fine. All right.
20 Your Honor, I move admission of Exhibit 124, actually, let me
21 go back. Did you prepare or cause to prepare under your
22 direction and control what is page 3?

23 A. I worked with my Executive Director from Wisconsin
24 Cheese Makers on this, so together we put these numbers
25 together. I had all the data, I just hadn't put it on the

1 paper.

2 Q. But you participated in directly in that?

3 A. Yes, absolutely.

4 Q. Okay. Your Honor, I move admission of Exhibit 124 and
5 125.

6 JUDGE CLIFTON: Let us start with Exhibit 124. Does anyone
7 want to ask questions of Mr. Buholzer before determining
8 whether you have any objections? No one. Is there any
9 objection to the admission into evidence of Exhibit 124? There
10 are none. Exhibit 124 is admitted into evidence.

11 (Thereafter, Exhibit Number 124, was
12 received into evidence.)

13 JUDGE CLIFTON: With regard to Exhibit 125, does anyone
14 want to ask questions of Mr. Stettler before determining if you
15 have an objection? No one. Is there any objection to the
16 admission into evidence of Exhibit 125? There are none.
17 Exhibit 125 is admitted into evidence.

18 (Thereafter, Exhibit Number 125, was
19 received into evidence.)

20 MR. ENGLISH: Your Honor, I actually forgot one or two
21 questions that I meant to ask of the two of them together.

22 Q. So do you understand that this proceeding is about
23 promulgating a brand new potential Federal Order for California
24 only?

25 MR. BUHOLZER: Yes, I do.

1 MR. STETTLER: Yes, I do.

2 Q. Okay. And so whatever comes out of this isn't going to
3 have any immediate impact on Federal Order 30, correct?

4 MR. BUHOLZER: Correct.

5 MR. STETTLER: Correct.

6 Q. And you understand that that would, at least until, if
7 there ever is a proceeding nationally for Order 30, leave
8 California with a different, and likely lower price for cheese
9 than for you?

10 Do you understand that, a regulated price?

11 MR. STETTLER: It is possible.

12 MR. BUHOLZER: Yes.

13 Q. Okay. And does that raise any concerns for you?

14 MR. STETTLER: It is lower now, so no.

15 Q. Mr. Buholzer?

16 MR. BUHOLZER: No, we'd have to compete.

17 Q. Okay.

18 MR. STETTLER: Our price in Wisconsin is all based on
19 competitive milk pricing. I mean, we -- we have a different
20 environment than California.

21 Q. The witnesses are available for examination.

22 JUDGE CLIFTON: Well, Mr. Stettler, help me here. I think
23 what you are telling me is you pay more than the regulated
24 minimum price?

25 MR. STETTLER: That's correct.

1 MR. BUHOLZER: All the time.

2 JUDGE CLIFTON: Okay. Who else has questions for
3 Mr. Stettler or Mr. Buholzer? Mr. Beshore?

4 CROSS-EXAMINATION

5 BY MR. BESHORE:

6 Q. Good morning, gentlemen. Marvin Beshore. I represent
7 the cooperatives that have requested this hearing and wish for
8 their dairy farmers in California, a Federal Milk Order. And
9 includes DFA and LOL who have operations in the Upper Midwest,
10 and also California Dairies, which is just here in California.
11 So I really thank you for your testimony and for coming here
12 when, you know, this doesn't involve you in anyway, certainly,
13 but the information you provided is interesting and useful, I
14 think.

15 Do you understand that, or let me suggest that the
16 reason my clients, my dairy farmers, requested this hearing and
17 the reason we're here is basically because they are getting
18 paid a lot less for their milk than you pay your farmers day in
19 and day out, month in and month out. Do you understand that's
20 the basic dynamic under this proceeding?

21 MR. STETTLER: Yes.

22 MR. BUHOLZER: Yes.

23 Q. Okay. And you have just testified in response to
24 Mr. English's questions that, you know, you pay the minimum
25 Federal Order Class III price, plus competitive premiums month

1 in and month out in Wisconsin, correct?

2 MR. STETTLER: That's correct.

3 MR. BUHOLZER: That's correct.

4 Q. Just out of curiosity, can you remember, either of you,
5 anytime that you paid less for milk than the minimum Class III
6 price to your patrons?

7 MR. BUHOLZER: It has never happened at Klondike.

8 MR. STETTLER: There would have been a time where I, when I
9 was not a pool plant and I didn't have the options of selling
10 my cheese at a higher price, and there was more pooling money
11 available, we were probably lower than minimum price.

12 Q. Okay. And how long ago was that? You don't have to be
13 precise.

14 MR. STETTLER: Ten years.

15 Q. Okay. Do both of you purchase exclusively Grade A milk
16 at this time?

17 MR. BUHOLZER: No.

18 MR. STETTLER: No.

19 Q. Okay. So some of your patrons are Grade B producers?

20 MR. STETTLER: Correct.

21 MR. BUHOLZER: Yes.

22 Q. Okay. So Mr. Buholzer, Klondike, if I understood your
23 testimony, maybe you can help me with this, is processing about
24 a thousand pounds, a million pounds a day. Did I understand
25 that right?

1 MR. BUHOLZER: That's correct, sir.

2 Q. Okay. And so what I wasn't sure about, on your, on
3 page 4 of Exhibit 124 it showed total milk purchases of per
4 month of around, you know, 11, 12 up to 15 million pounds,
5 which is closer to a half a million pounds a day.

6 MR. BUHOLZER: Yeah. We -- the nonfat milk we buy, which
7 is on the other column, of course we reconstitute that with
8 water so we're about around a million pounds milk equivalent.

9 Q. Okay. Got it. Thank you. So on this, on the same
10 Exhibit then, 4, page 4, when you calculated the other solids
11 cost, if my quick arithmetic is correct, you were including the
12 cost of other solids in the nonfat dry milk as well as in your
13 fresh milk?

14 A. That's correct, sir.

15 Q. Okay. Now, when you are buying nonfat dry milk, that
16 is being bought at whatever the market price is for nonfat at
17 the time, correct?

18 A. That's correct.

19 Q. Okay. Which is not necessarily the same price as the
20 price for other solids in fresh milk and the Federal Order
21 prices for that month?

22 A. That's also correct.

23 Q. Okay. Do you try to -- I'm sure you do try to, you
24 guys have short pencils the way you run your businesses, you
25 try to buy that nonfat what it is at a very good price and have

1 it available for your use as you need it?

2 A. Actually, we generally contract yearly, so we don't do
3 much spot stuff. We don't have warehouse capabilities to do
4 that, so, you know, we get two or three loads a week, every
5 week, throughout the year.

6 Q. So, like, at the present time, the price of other
7 solids in the nonfat, if you were just isolating that, would be
8 somewhat less than the price in your fresh milk for, under the
9 Federal Order milk pricing, would it not?

10 A. You know, I'm a master cheese maker, I'm not an
11 accountant

12 Q. Okay. Yeah, I'm a lawyer, I'm not an accountant
13 either, I may be real wrong about that. But in any event,
14 there's a different price factor or a different cost factor
15 when you are buying the powder on the powder market, you are
16 buying the milk on the Federal Order milk price market?

17 A. Yes, we can agree to that definitely. Yes.

18 Q. Okay. Thank you. So are you familiar with a study
19 that was called Opportunities for the Wisconsin Whey Industry,
20 a Wisconsin whey study that was done in 2013?

21 A. I have -- yeah. I have probably, I looked at it a
22 little bit in '13, but it's been a long time since I looked at
23 it.

24 Q. Okay. How about you, Mr. Stettler?

25 MR. STETTLER: I was aware of it, but I haven't really read

1 it.

2 Q. Okay. It was -- it's been marked as an exhibit and
3 presented and admitted into evidence as an exhibit as part of
4 yesterday when Mr. Fish from Saputo was testifying, along with
5 Dr. Schiek. And I wonder if --

6 JUDGE CLIFTON: Shall I hand them a copy?

7 MR. BESHORE: I would appreciate that, your Honor, this is
8 Attachment 3 to Exhibit 123. And I'm on page, the page that's
9 marked 24 on the bottom, handwritten number 24 on the bottom.

10 MR. STETTLER: Okay.

11 BY MR. BESHORE:

12 Q. Okay. And there's a chart here which represents a
13 survey, as I understand it, of cheese plants in Wisconsin in
14 2011, and how they, how they handled whey, and how many plants
15 handled whey, and it has 1, 2, 3, 4, 5, 6 different categories
16 of whey handling, level of processing it's called. Do you see
17 that, where it is called Level of Processing, then it has six
18 rows under that?

19 MR. BUHOLZER: Yes.

20 Q. Okay. Let me go with Mr. Buholzer first. Which level
21 would represent Klondike's whey handling?

22 MR. BUHOLZER: Well, I have got to read the footnotes down
23 at the bottom here quick before I can answer that.

24 Q. Sure, please do.

25 A. We would be limited processing, footnote number 3, but

1 I don't know if this is exactly accurate, because they are not
2 talking anything about my permeate or lactose stream on that,
3 but that would be the closest for me.

4 Q. The closest, okay. So there might even be additional
5 categories that could be refined on this list of how of levels
6 of processing of whey?

7 A. In my case, yes.

8 Q. Okay. And Mr. Stettler, Decatur, what your
9 cooperative, what level of processing would you fit into here?

10 MR. STETTLER: I would be in number 2, sold for whole whey
11 for processing. I think there was 41 plants there.

12 Q. Okay. So would you agree with me that each of these
13 levels, and I'll ask Mr. Buholzer first, each of these levels
14 and possible additional refinements represent different manners
15 of handling whey, all of which are engaged by different cheese
16 manufacturers in Wisconsin?

17 MR. BUHOLZER: Without reading the study, I would assume
18 that's what it says, but I haven't read the, you know, like, I
19 really -- I really don't want to go on record saying what this
20 means without understanding what it means.

21 Q. Okay. Do you have any thoughts on that, Mr. Stettler,
22 whether this represents the fact that cheese plants in
23 Wisconsin have many different ways, at least six levels, and
24 perhaps more as Mr. Buholzer indicated if you refine them
25 further, many different ways of handling whey?

1 MR. STETTLER: Well, there are different ways of handling
2 whey but I don't know how I would classify them all, so I mean.

3 Q. Okay. Well -- okay. So setting aside exactly how they
4 are classified, and I don't want to be stuck into those boxes
5 necessarily, would you not agree that the choices made by the
6 cheese maker, I'll ask you first, Mr. Stettler, the choices
7 made by the cheese maker in terms of how they handle whey,
8 result in different income streams and cost configurations for
9 that particular manufacturer?

10 MR. STETTLER: It would be facility-driven, yes.

11 Q. So each individual manufacturer would have their own
12 configuration of costs?

13 A. Correct.

14 Q. And revenues? Okay. That's yes?

15 A. Yes.

16 Q. She can't take a nod. And would you agree with that
17 also, Mr. Buholzer?

18 MR. BUHOLZER: Yes, I would.

19 Q. Okay. Now, let me just back up to Federal Order
20 pricing a bit. I think you indicated you are both pool plants.

21 MR. BUHOLZER: That's correct.

22 MR. STETTLER: Yes.

23 Q. And part of the CMPC system of pooling if I read right
24 when I looked at the list of plants on the Market
25 Administrator's website, correct?

1 MR. BUHOLZER: Yes.

2 MR. STETTLER: Yes.

3 Q. Okay. Do you get regular -- besides being assured that
4 you are pooled being part of that system, are you, do you
5 receive regular distributions from that pooling program each
6 month or how does that work?

7 MR. BUHOLZER: Yeah, it varies. It's been negative the
8 last few months where it's actually been a draw. Most months
9 it's a positive, that's one of the reasons we're in it, to try
10 to get the best return we can to our farm patrons.

11 Q. Okay. You are talking about the pool draw?

12 A. Correct.

13 Q. Okay. Okay. So I was talking about the CMPC, super
14 pool system, I don't know if it is still called that, it used
15 to be called that years ago. The CMPC pooling program that
16 enables you to, in which you are in a system of supply plants,
17 it's called.

18 A. Okay.

19 Q. Does that result in any revenues to you other than the
20 pool draw?

21 A. Not that I'm aware of.

22 Q. Okay. Mr. Stettler?

23 MR. STETTLER: For me, I have only been in the pool since
24 August so it is new to me. I haven't really done a lot with
25 CMPC.

1 Q. Okay. So Mr. Buholzer, do you -- do you ever have to
2 give up milk?

3 MR. BUHOLZER: Yes. I have to ship -- well, last year --
4 in a typical year I'm going to say I ship 20 loads. 2014 we
5 didn't ship any because milk was so long in the Midwest, and
6 2015 so far I have shipped one load.

7 Q. Okay. And if you to ship, you get paid for that?

8 A. That's correct, yes.

9 Q. Is there a give-up cost associated with that?

10 A. Well, you know, you sell it as Class I and you know,
11 the prices, the Class I, II, and III are always, you know,
12 bouncing around, so, I mean, yeah, it is fair. We get a fair
13 price for it.

14 Q. Okay. Both of you, I think, if I read it right,
15 process or, yeah, manufacture, make some Class II products as
16 well as Class III products.

17 MR. BUHOLZER: That would only be me, sir, we make yogurt.

18 Q. Okay. What portion of your production is yogurt versus
19 the cheeses?

20 A. It is real low, we just opened our yogurt plant a
21 couple years ago. Percentage-wise it's, I think last month we
22 sold maybe 400,000 pounds of yogurt, total, versus I don't know
23 how many pounds of cheese. Without a calculator I can't give
24 you the percentage.

25 Q. I don't need the precise percent.

1 A. Yeah, it's small, I wish it was bigger.

2 Q. You are hoping it grows?

3 A. Yeah.

4 Q. I guess, yeah. And do you have a retail store at your
5 location?

6 A. We do not.

7 Q. You do not. Do you, Mr. Stettler?

8 MR. STETTLER: Yes, we do.

9 Q. You do. And what portion of your production is sold
10 through the retail?

11 MR. STETTLER: It's very small. I -- I mean, we run about
12 50,000 pounds of cheese a day, and I -- I don't know if I sell
13 that in a month out of the store.

14 Q. Okay.

15 A. I mean, of our own products. I mean, I don't have
16 those numbers in front of me.

17 Q. I'm not looking for precise numbers or -- and I'm not
18 looking for anything that you don't want to share, that's your
19 prerogative here.

20 In terms of your size of your plant, Mr. Stettler, you
21 say you are making about 50,000 pounds of cheese a day.

22 A. There are times when we do 40 to 50.

23 Q. 40 to 50? And is that seven days a week or how does --
24 what do you run?

25 A. Six days.

1 Q. Six days? Okay. I think those are all the questions I
2 have at this time. Thank you very much, gentlemen.

3 JUDGE CLIFTON: It's 10:30. Gentlemen, if you have time, I
4 would like us to take a 15-minute break and then invite you
5 back for further questions. Would that work for both of you?

6 MR. BUHOLZER: That's fine.

7 MR. STETTLER: Yes.

8 JUDGE CLIFTON: All right. Let's do that. Let's take our
9 break now, be back and ready to go at 10:45.

10 (Whereupon, a break was taken.)

11 JUDGE CLIFTON: We're back on record at 10:46. Who next
12 has questions for these gentlemen, Mr. Buholzer and
13 Mr. Stettler? Mr. Vetne?

14 CROSS-EXAMINATION

15 BY MR. VETNE:

16 Q. Okay. I'll enter my morning appearance, John Vetne,
17 representative for Hilmar Cheese Company.

18 Both of you have, as I read your statement and heard
19 most of your testimony, both of you have experienced challenges
20 and losses in handling the whey stream of cheese; is that a
21 fair statement?

22 MR. BUHOLZER: That's correct.

23 MR. STETTLER: That's correct.

24 Q. But your total enterprise cooperative or cheese plant,
25 is able to sell cheese products and receive a return on that

1 and still have money left over to pay producers generally a
2 premium over Class III, correct?

3 MR. BUHOLZER: Correct.

4 MR. STETTLER: Yes.

5 Q. And that's because you take, what you end up doing with
6 the whey losses and the whey challenges is essentially moving
7 that over to the cheese and to try to get it out of the cheese
8 market rather than the whey market, correct?

9 MR. BUHOLZER: That's correct.

10 Q. Is that true for both of you?

11 MR. STETTLER: I have had whey conversations where it's
12 like, don't raise my price of cheese because you are not
13 getting the value of whey, especially when whey and WPC went
14 really high. So I mean, the buyers are educated enough to
15 understand that they are not going to replace the value of
16 whey.

17 Q. Okay. Let me ask about the buyers. Do you market your
18 cheese to intermediaries that cut, wrap, convert into consumer
19 packaging or food service packaging?

20 MR. STETTLER: We do both, I do both.

21 MR. BUHOLZER: Yeah, all of the above.

22 Q. All of the above. So you have some direct sales from
23 your operations in consumer or food service packaging to
24 wholesalers?

25 MR. BUHOLZER: Yes, we do.

1 MR. STETTLER: Yes.

2 Q. Okay. And whether your product is marketed through a
3 cut and wrap converter or directly to a wholesaler, for all of
4 those wholesalers you meet competition from others that, that
5 make a similar product and would like to offer it to your
6 customers, correct?

7 MR. STETTLER: All the time.

8 MR. BUHOLZER: That's always the case.

9 Q. That's always the case. Okay. Are you generally
10 familiar with the identity of those that compete with you, make
11 similar products?

12 MR. BUHOLZER: In the case of the Feta cheese, yes, it is a
13 limited -- in the case of our Feta cheese there is a limited
14 number of people manufacturing it. Like on the Muenster and
15 the Havarti and the bricks, where there's more people, you may
16 not know your competition as well.

17 Q. Okay. Because those products are produced throughout
18 the country?

19 MR. BUHOLZER: More, there will be more plants making it
20 than with the Feta cheese, yes.

21 Q. Okay. Do either one of you know whether you meet
22 competition for the products you make with cheese that's
23 produced in the western states, Idaho, California, the
24 Northwest?

25 MR. BUHOLZER: In my case, there are Feta production plants

1 out west here that I know of. And I -- I don't know about the
2 other cheeses, the brick, Muenster, and Havarti, if there's any
3 out, I'm sure there is at some of your specialty cheese plants
4 out here, but I'm not aware of them.

5 MR. STETTLER: I'm not aware of any. I sell some cheese in
6 California but --

7 Q. Okay.

8 MR. STETTLER: But I don't know of anybody that would
9 process Muenster or Brick, Havarti.

10 Q. Would it be fair to say that the ability of each of you
11 to pay a premium to your producers is directly dependent upon
12 the intensity of competition you meet from other cheese makers?

13 MR. STETTLER: Well, the competition from other cheese
14 makers may not necessarily raise your sales price, but it could
15 raise your cost amount.

16 Q. How is that?

17 MR. STETTLER: Well, if they are paying more for milk, you
18 may have to pay more for milk.

19 Q. Okay. So you are talking about competition from cheese
20 makers within the Upper Midwest, within Order 30, as far as
21 competition for raw milk, correct?

22 MR. STETTLER: Well, I'm talking about cheese makers in my
23 backyard.

24 Q. Okay.

25 A. This guy here, we're talking about each other.

1 Q. Well, follow me here for a minute and see if you agree.
2 If there were cheese of the varieties that you make coming into
3 the Midwest from Texas, Idaho, California, that significantly
4 undercut the price that you were offering cheese to your
5 customers, you would have to lower your price, wouldn't you?

6 MR. BUHOLZER: Possibly, it depends. A customer is built
7 on many things, quality, service, long-term relationships, but
8 it could be detrimental, correct.

9 Q. Okay. And at least you mentioned that you are aware of
10 the California price, it's lower now, has been for awhile,
11 correct?

12 MR. BUHOLZER: Yes.

13 MR. STETTLER: Correct.

14 Q. Okay. If -- if Western Cheese, cheese from the West,
15 again Idaho, California, elsewhere, that is marketed to the
16 Midwest has not, to this time, undercut your ability to sell
17 cheese and have enough money left over to pay premiums to dairy
18 farmers, has it?

19 MR. BUHOLZER: No, it hasn't.

20 MR. STETTLER: No, no, it hasn't.

21 Q. Do you know, by the way, whether your competitors in
22 the West are able to pay a similar premium relative to their
23 regulated price as you are able to pay a premium relative to
24 yours?

25 MR. BUHOLZER: I don't know that for a fact, I would have

1 no way of knowing that.

2 Q. Okay. Thank you.

3 MR. STETTLER: I'm not aware of any.

4 JUDGE CLIFTON: Who next has questions for this panel?

5 Now, I have a question, Ms. Taylor. Would you like
6 Mr. English to do any redirect that he has before you ask
7 questions or are you ready?

8 MS. TAYLOR: Whatever he prefers.

9 JUDGE CLIFTON: All right. Right this minute he's saying
10 he doesn't have any redirect, so let us have you go,
11 Ms. Taylor, and then Mr. English may have some redirect.

12 CROSS-EXAMINATION

13 BY MS. TAYLOR:

14 Q. Good morning. My name is Erin Taylor, I'm with the US
15 Department of Agriculture, and I first want to thank both of
16 you for coming out here and participating in this proceeding
17 and giving your views from your company's perspective.

18 I have a few questions for both of you. I think I'll
19 start with Mr. Stettler, if I pronounced that correctly?

20 MR. STETTLER: Yes.

21 Q. Okay. You are a small business with 33 employees but
22 Decatur Dairy is a cooperative?

23 A. Yes.

24 Q. That's correct? And how many cooperative members do
25 you have?

1 A. 76.

2 Q. Okay. And part of the Department's things we must
3 consider in this rule making proceeding is the impact on small
4 businesses. And just curious, and I know you are a Wisconsin
5 cooperative, but would most of your cooperative members qualify
6 as a small business and we define that around 315,000 pounds of
7 milk production per month?

8 A. About 90 percent of them would be small business.

9 Q. Okay. So your cooperative sells wet whey to a local
10 processing plant and you don't do any processing of the whey
11 stream at your plant; is that correct?

12 A. Yes.

13 Q. Okay. And how close is the facility that you ship it
14 to?

15 A. 15 miles.

16 Q. Okay. And do you pay the transportation or does that
17 plant pay the transportation cost?

18 A. We do not pay the transportation.

19 Q. Okay. And I wanted to turn to the last, or your second
20 page of your statement.

21 A. Yes.

22 Q. The second paragraph on the bottom it starts, "Our
23 cooperative strongly encourages a review of this pricing." And
24 the second sentence reads, "Decatur Dairy has been short on
25 covering milk costs the last five years." Is that all of your

1 milk costs or just your whey stream portion?

2 A. It would be the whey stream portion.

3 Q. Okay. I think that's all I have. Thank you very much,
4 Mr. Stettler, and I would like to move to you, Mr. Buholzer.

5 JUDGE CLIFTON: Would you say it again because I know you
6 don't put the emphasis on the "BU" so say it again. We'll get
7 it.

8 MR. BUHOLZER: Buholzer.

9 MS. TAYLOR: My maiden name is French, so I completely
10 understand.

11 BY MS. TAYLOR:

12 Q. Your company, Klondike Cheese Company, is not a
13 cooperative, correct? You are just a cheese manufacturer. It
14 used a cooperative but now it's solely owned by your family?

15 A. That's correct.

16 Q. And you have 75 shippers?

17 A. Yes.

18 Q. And they are independent shippers?

19 A. Yes.

20 Q. And same question about small businesses, would most of
21 them qualify as a small business?

22 A. Yeah, I'm going to be probably the same percentage as
23 Steve was, around 90 probably.

24 Q. Okay. And so in general, your company does do some
25 whey processing, if I'm correct. You take your whey stream and

1 you either UF it or RO it to produce WPC 34 wet whey or
2 permeate?

3 A. Yes.

4 Q. And you cool that at your facility?

5 A. Yes.

6 Q. My questions might seem kind of elementary, but I'm
7 just learning this whey process.

8 A. That's okay. That's what I'm here for.

9 Q. Okay. And then you ship both of those products to a,
10 for another facility for processing?

11 A. Yeah, it is two separate places, but it ships away,
12 yes.

13 Q. And how close are those facilities?

14 A. The lactose permeate is about seven miles and the WPC
15 is about 15 miles. They are both real close and they also
16 both, it is FOB my plant so it is --

17 Q. Okay. I wanted to turn to your exhibit, and I'll start
18 with the profit and loss tables that you have. I just want to
19 make sure that we're clear on the numbers so that when we are
20 looking at this months down the line, we know what's on here.
21 On the second row of, second set of tables on the bottom, it
22 says, we changed it to UFWPC 34 sales, and you have total
23 pounds, and for January that's 278,120 pounds. Is that pounds
24 of protein?

25 A. That's pounds of solids.

1 Q. Pounds of solids. And then for the whey permeate
2 sales, that's also total pounds of solid?

3 A. That's correct.

4 Q. Okay. On your costs that you give us on the following
5 page, your operating costs for 2014, we're total of \$324,196.
6 Is that for both whey products that you produce, the permeate
7 and the WPC?

8 A. Yes, it is.

9 Q. Okay. So I was working through the numbers and I do
10 believe that the 9 cents is the average per UF solids, the way,
11 if you'll indulge me, that it came out, so around that when I
12 used that. But would it be appropriate to take that total cost
13 and really it should go against all your solids, both your WPC
14 and your permeate solids to come up with an average cost of
15 processing? Would that be a correct way of looking at the
16 cost?

17 A. Well, that would be correct if you are looking at it,
18 if you need to put it on a column basis, but I'm basically
19 looking at the dollars and the page before. And the total
20 dollars come off and then we took that by our other solids
21 cost, so, yes, that probably would be a -- that 9 cents would
22 be different, because it would be spread over more pounds, but
23 dollar-wise it's going to be the same.

24 Q. I agree. But just so we wanted to make sure that was
25 the appropriate way to look at that number. And that includes

1 your cost of cooling, correct? You talked about your
2 electricity cost included all of that?

3 A. Yes. As I said before, I think I was pretty
4 conservative on that. But I needed to be to make sure I was
5 correct as possible.

6 Q. Okay. And because I'm knew to this whey process,
7 learning about it, when you make your products, you just run it
8 through, do you run it through one time and get both products
9 out, or do you run it through one time and you get WPC, and you
10 run the remaining back through again and get permeate?

11 A. Yeah, it's actually two different systems. The
12 ultra-filtration system, you run the, first you take the whey
13 and run it through the separator to take the cream out, and
14 then you run it through the ultra-filtration system that
15 separates the proteins, and then the stream off that goes to
16 another machine, which is a reverse osmosis system, which takes
17 water out of the lactose.

18 Q. Okay. I believe that's all I have. I do want to thank
19 both of you for coming, and especially putting in actual
20 numbers from your plants and I know a lot of that is
21 confidential information. We don't always get this type of
22 data from individual plants. And it's, from the Department's
23 perspective, if we're asked to make a decision on numbers, to
24 see real numbers not just theoretical things so I do want to
25 specifically thank you for that. That's all I have.

1 JUDGE CLIFTON: Mr. Beshore?

2 CROSS-EXAMINATION

3 BY MR. BESHORE:

4 Q. Just a couple, two additional questions that came to me
5 on some of the questions you were asked after me.

6 With respect to the purchasers of your whey products,
7 are they cheese plants or aggregators, or otherwise? And
8 either Mr. Buholzer?

9 MR. BUHOLZER: In my case, the lactose or the permeate is
10 going to a plant that only does drying and they make animal
11 feed, it's just, it's the only outlet that's close enough. My
12 system could go human grade, but there's nobody close enough
13 that I can ship to.

14 Q. So that's not a cheese plant that has whey processing
15 on the side?

16 MR. BUHOLZER: No.

17 Q. Free-standing dryer.

18 A. Yeah.

19 Q. Thank you.

20 A. And the, my whey protein concentrate also goes onsite.
21 Where it goes, there is a cheese plant, but it is a separate
22 whey plant, it is a whole separate entity.

23 Q. Okay.

24 A. So it is not just a neighboring cheese maker who has
25 some equipment in. It is more than that.

1 Q. And Mr. Stettler?

2 MR. STETTLER: I have the same thing. I, actually there's
3 a partnership kind of involved with my whey, because the one
4 plant that's so close, they take it in, and they both have,
5 that plant has whey capabilities and also cheese, but the
6 facility I send it to is just whey. And then that product,
7 through an agreement, goes north to another plant. So it's
8 actually two plants working together to use my product.

9 Q. Okay. And are they both cheese plants with whey, with
10 associated facilities?

11 A. No, one is cheese and whey and the other one is just
12 whey.

13 Q. Just whey. Okay. Thank you. And one other question,
14 Mr. Stettler, you mentioned this, but I didn't hear anything
15 from Mr. Buholzer wasn't asked. Your product, let me just
16 clarify, you have product that goes to California, I think you
17 indicated?

18 MR. STETTLER: A little bit.

19 Q. Do you have other sales west of Wisconsin?

20 MR. STETTLER: For me.

21 Q. No, I mean, Mr. Stettler, just to clarify Mr. Stettler
22 and then the same question to you.

23 MR. STETTLER: Well, I have sales in Iowa, Nebraska, I mean
24 some.

25 Q. Okay. And then some in California?

1 A. Right.

2 Q. Okay. Thank you. And same?

3 MR. BUHOLZER: Yeah, the same thing. I mean, we're, we got
4 sales all over the United States, they just, some states a
5 little bit, some states more. The closer in, the more, you
6 know, just the nature of the beast.

7 Q. Sure. But you're national?

8 MR. BUHOLZER: Correct.

9 Q. Okay. Very good. Thank you again, gentlemen.

10 JUDGE CLIFTON: Before I invite redirect, are there any
11 other questions for the panel by anyone else? I see none.
12 Redirect, Mr. English?

13 REDIRECT EXAMINATION

14 BY MR. ENGLISH:

15 Q. Thank you, your Honor. Chip English.

16 Gentlemen, my redirect is in the form of a thank you.
17 Appreciate your coming. We really appreciate your bringing
18 rain with you, and but really, on behalf of everybody, and I
19 really mean it, thank you very much for bringing this
20 information for the record. And that's all I have, your Honor.

21 JUDGE CLIFTON: Gentlemen, we really do appreciate it.
22 Just as both of them have said. You can imagine how difficult
23 this decision making process will be for the USDA employees,
24 and we appreciate your contribution.

25 MR. STETTLER: Thank you.

1 MR. ENGLISH: Your Honor, Chip English. At this time, as
2 forecast earlier this morning, I'd ask that Dr. Schiek return
3 to the stand. I don't know whether there's any additional
4 cross-examination. I would like to wait for my redirect until
5 there has been additional, assuming there is any, so this may
6 be relatively short or not, I don't know. Mr. Beshore is
7 raising his hand so I guess maybe not.

8 MR. BESHORE: Relatively short.

9 MR. ENGLISH: So Dr. Schiek is returning. So it's clear
10 for the record, he and Mr. Pat Fish testified yesterday with
11 respect to pricing issues, and they testified as a panel, but
12 we did ask everybody who had questions of Mr. Fish, because of
13 his Wisconsin experiences, to be completed yesterday. And my
14 understanding was he was completed. So the questions today
15 will be of Dr. Schiek, and that may not, well, we'll see what
16 he can answer about the Wisconsin issues, but I presume that
17 Mr. Beshore has whatever questions he has.

18 So just setting the stage so the record's clear,
19 Dr. Schiek has returned to complete his portion of the
20 cross-examination and redirect.

21 JUDGE CLIFTON: Yes. And Mr. Beshore, you may begin it,
22 today.

23 CROSS-EXAMINATION

24 BY MR. BESHORE:

25 Q. Marvin Beshore. I just have one question which may

1 lead to some others, but one topic I should say, Dr. Schiek.
2 On page 4 of your testimony, which is Exhibit 122. There's a
3 sentence that I think I have heard at least twice, maybe more
4 than that now in the hearing, and it's the top paragraph, "the
5 market's for finished dairy products clear nationally, but the
6 market for milk clears locally." Do you see that?

7 A. Yep.

8 Q. Ad I think this was also in your prior testimony,
9 correct?

10 A. Correct.

11 Q. Okay. So it seems like maybe it is sort of a mantra
12 for the position I'm hearing from Dairy Institute. And my
13 first question about that, is that, is there a source for that
14 or is that something that's been kind of coined for this
15 proceeding?

16 A. There's not a, that I'm aware, there's not a source for
17 that, Mr. Beshore. I think, as I indicated earlier testimony,
18 it's just kind of an experiential observation that, you know,
19 product moves, finished product moves in national markets, and
20 you know, milk is, does not, at least as bulk milk, it does not
21 because there's limits on how far you can transport it and
22 still have value with the product.

23 Q. So do you mean that to be just an observation of fact
24 or a statement of policy that should be applied in this
25 proceeding?

1 A. Well, it's, from my perspective, it's an observation of
2 what I observe in the marketplace, so that's the, that's the
3 genesis of the statement. And I think to the extent that that
4 is what happens in the marketplace, it is something that should
5 be considered in formulating policy.

6 Q. Okay, so if that is something that happens and should
7 be considered in formulating policy, can you define for me
8 locally?

9 A. That's a good question. It's probably a little
10 trickier to come up with the boundaries of what a local market
11 is. I think it depends on the market that you are in. Locally
12 can mean, I guess within a reasonable distance to ship the
13 product before you start losing lots of value. So, for
14 example, I guess I can give you examples. In California, you
15 know, local clearing I think would be within the state, if,
16 like if you are in the Central Valley somewhere within
17 California could be considered a local clear. Shipping it to
18 Idaho would probably not be considered a local clear, or
19 shipping it some, even as far as Arizona. I suppose if you
20 were in Southern California, Arizona could be thought of as
21 clearing locally.

22 I think what I'm really trying to delineate there is
23 the distance, the long distance shipments are not really local
24 clearing. That's my thought about it.

25 Q. So what -- what is your -- when you are using it as a

1 basis for recommendations for policy in this hearing, are you
2 saying that prices should be set so that no milk is cleared
3 from the State of California to Arizona?

4 A. No. I think -- I think what I'm saying is that the
5 fact that product markets for the milk markets need to clear is
6 just something that needs to be considered, and there's a
7 practical limitation on how far the milk can go to clear it.

8 Q. What is that practical limitation?

9 A. Well, I think it's -- it's determined by the cost of
10 hauling the milk and the value of the milk.

11 Q. So are you aware of the distances in Federal Order
12 markets which milk travels regularly and routinely to clear?

13 A. I am not particularly aware. I do know milk travels
14 for fluid use fairly long distances. I'm not aware of the
15 market clearing distances it's traveling in other regions of
16 the country.

17 Q. Okay. Are you suggesting in this hearing that there
18 are dysfunctions in other markets if milk is regularly
19 traveling substantial distances to clear?

20 A. I don't think I have any comment on other markets that
21 I'm not really familiar with.

22 Q. Okay. If the price in -- if milk needs to move from
23 California to Nevada to clear the market, is that a non-local
24 transaction in your view?

25 A. I think it depends. I think it depends kind of on

1 where it is originating from. California is a big state.

2 Q. It depends if it came from Southern California it might
3 not be local?

4 A. Might not.

5 Q. Okay. And then you would consider that to be something
6 that should be regulated out, so-to-speak? Avoided by
7 regulation?

8 A. I'm not clear on your, the question.

9 Q. Okay. Maybe I don't understand your recommended
10 recommendations for policy. As I, as I understand it, you are
11 recommending prices that will assure that milk clear locally in
12 California.

13 A. I think maybe we're, what I'm referring to is kind of
14 the view of how the market works overall. I mean, how does
15 the, how does the product, milk product, or milk marketed in
16 the marketplace get utilized, and how does it sort of flow from
17 producer to a plant that uses the milk in the marketplace. So
18 I think you can always have instances, and I think I said this
19 earlier, where you might have distressed milk that has to move
20 longer distances, or you might have a short seasonal peak, but
21 what you don't want to have is a consistent situation. If you
22 have a consistent situation where the milk price is stimulating
23 production to the point where it's always having to travel or
24 frequently having to travel at more than just an occasional
25 basis, long distances to find a home, that would be

1 representative of a milk price that's not market clearing.
2 That's really what I'm saying.

3 Q. And can you tell us what a long distance is in that
4 context?

5 A. I don't have a definition of a long distance. And like
6 I say, I think it depends on, to some degree, on conditions in
7 the marketplace. There are some marketplaces where just normal
8 hauling of milk is longer distances. There are others where
9 the normal functioning of the market is shorter hauls. But I
10 would say beyond those distances that milk normally moves
11 routinely in the marketplace.

12 Q. How much beyond?

13 A. I guess I don't have a definitive number of miles
14 beyond for you.

15 Q. If it depends on market conditions, do you have any
16 criteria for those conditions that you can provide? I think
17 you said the distance depends on the market conditions. And
18 I'm wondering if you can, you can't provide a distance, can you
19 tell us anything about the conditions that would suggest it's
20 too far?

21 A. I don't know if I have specific conditions in mind.
22 I'm thinking that, again, a lot of it will depend on what the
23 value of the milk is. And as you begin losing value for that
24 milk below the cost of production of the milk, that would be,
25 that would be one indicator, one market indicator of it being

1 too far.

2 Q. Okay. Is there an amount below the cost of production
3 that would indicate it is too far?

4 A. No, I don't have a specific number, Mr. Beshore.

5 Q. Thank you.

6 JUDGE CLIFTON: Who has additional questions for Dr. Schiek
7 on the pricing issue? I see none. Redirect?

8 REDIRECT EXAMINATION

9 BY MR. ENGLISH:

10 Q. Thank you, your Honor, Chip English.

11 So first, Dr. Schiek, something that we may have
12 discovered overnight. Looking at Exhibit 123 and the
13 manufacturing costs, it could be just as well any of them, but
14 let's look at cheese manufacturing costs which is page 13 of
15 the exhibit, which is part of the Attachment 1, the materials
16 from the California Department of Food and Agriculture dated
17 November 12, 2014.

18 All right. Do you have that?

19 A. Which page again?

20 Q. Page 13, it is the cheese manufacturing cost.

21 A. Correct.

22 Q. So we, you have introduced into the record, along with
23 Mr. Fish, the idea of a make allowance based on some of these
24 historical numbers, correct?

25 A. Correct.

1 Q. Okay. And looking at the information that's on
2 Page 13, first as a predicate, are you aware that when USDA
3 develops a make allowance, it includes a marketing
4 administrative cost?

5 A. I am aware.

6 Q. Okay. Does CDFA include a marketing cost?

7 A. No, they do not.

8 Q. Okay. So will Ms. Taylor address that at greater
9 detail?

10 A. I believe so.

11 Q. And that's Sue Taylor, not Erin Taylor, just for
12 clarity of the record. Is that correct, Dr. Schiek?

13 A. That's correct, Sue Taylor.

14 Q. It just dawned on me that I couldn't just say
15 Ms. Taylor. So two final questions. First, Mr. Beshore asked
16 you a number of questions about the issue about the history of
17 the M-W and whether it represented the lowest price with lost
18 value for manufacturing products.

19 Do you remember those discussions?

20 A. I do.

21 Q. Having thought about it first, if you look at your
22 testimony on page 3, when Mr. Beshore brought up the issue, he
23 referenced the minimum price that would be market clearing in
24 Federal Orders on the third line of page 3, and then he
25 referenced the issue about "today the states of Minnesota and

1 Wisconsin are no longer the regions where milk used for
2 manufacturing has its lowest spatial value." But he omitted
3 the discussion with you about the concept of particularly east
4 of the Rockies.

5 So what further discussion do you have today about what
6 might have been going on in the 1908's with respect to the M-W
7 and lowest value and how it relates to your testimony?

8 A. Yeah. In the 1980's, as I think I said, the use of the
9 M-W and the open floor basing point showed it was fairly
10 consistent in terms of the price relationships for Class I
11 across the eastern part of the U.S., that relationship was less
12 clear in terms of Class I pricing west of the U.S., and the
13 other thing --

14 Q. West of the Rockies?

15 A. West of the Rockies, sorry. And the other thing that
16 was happening during that time is that there were more, there
17 was the emergence, I guess, of manufacturing beginning to take
18 place in larger quantities, larger plants, larger volumes of
19 milk being manufactured in the Western U.S. at the time.

20 Q. Including places like Idaho?

21 A. Including places like Idaho.

22 Q. But -- and I know that you are not necessarily a
23 Federal Order expert, but, in fact, in 1985, in the Farm Bill
24 of '85, Congress adopted new Class I differentials, or new
25 minimum Class I differentials that were effective no less than

1 two years, but only made those applicable to east of the
2 Rockies. Is that your understanding?

3 A. That's my understanding. It's pretty, my understanding
4 is pretty limited to that.

5 Q. And to the extent there might have been other Grade B
6 supplies, say, in states like Kentucky, would those have served
7 as any kind of reserve for milk in the Federal Order system?

8 A. Not to my knowledge.

9 Q. Okay. And, finally, there's been a lot of conversation
10 around the idea that somehow this would establish a lower
11 different price for California. Do we have at least a
12 recommendation going forward for the Department if that creates
13 a concern for the Department, as to the timing and
14 implementation of a California Federal Order about what could
15 be done?

16 A. Yes. You know, I heard the testimony earlier in the
17 hearing of Mr. Metzger, where he suggested that one way of
18 dealing with that, if it's a concern, is to essentially hold
19 off on a decision in this proceeding and convene a national
20 hearing to address the issue.

21 Q. Or issue even a recommended decision and use the base
22 of the recommended decision for a national hearing is one
23 option, correct?

24 A. Correct.

25 Q. I have no further questions, your Honor.

1 JUDGE CLIFTON: Did the redirect prompt any further
2 questions for Dr. Schiek on this issue? I see none.
3 Dr. Schiek, thank you. You may step down.

4 MR. ENGLISH: Your Honor, Chip English.

5 So the plan that I had was not necessarily working, but
6 I am prepared to be flexible. My next witness was going to be
7 Mr. Vetne, and I understand that our just-in-time production is
8 not just-in-time, in this particular instance. But I do have
9 Mr. Zolin, Part 4, to testify at this time.

10 JUDGE CLIFTON: Could the new gentleman come forward and
11 identify yourself, and particularly if you would like to
12 testify today. Yes, please. We may want to take you before we
13 take Mr. Zolin, if you prefer that.

14 MR. SUNDQUIST: My name is Ron Sundquist and I'm a reporter
15 for the Clovis Roundup Newspaper. I document events being held
16 at the Clovis Veteran's Memorial District, so I have no
17 comments for the board, but I'm very much interested in your
18 activities and the dialogue is very interesting. I'm not into
19 this material deep enough to say anything on the subject.

20 JUDGE CLIFTON: All right. Well, we're delighted that you
21 are here. Welcome. And I would like to make sure that this
22 gentleman is given, Mr. Sundquist, is given a copy of the
23 exhibits when distribute them.

24 MR. SUNDQUIST: I appreciate that very much, and I will
25 certainly, if I do get any photos, represent this organization

1 to its finest.

2 JUDGE CLIFTON: Thank you, so much.

3 MR. SUNDQUIST: I'm sorry I didn't address you. Your title
4 is Administrative Law Judge, I see.

5 JUDGE CLIFTON: That's correct.

6 MR. SUNDQUIST: I see. So, Jill, I'm very thankful for you
7 asking me to come up and very honored.

8 JUDGE CLIFTON: Thank you.

9 MR. SUNDQUIST: And thank you to all the representatives
10 who are here.

11 JUDGE CLIFTON: Thank you we appreciate your coverage.
12 All right. Mr. Zolin, you may take the witness stand.

13 MR. ENGLISH: As he does, I know that Mr. Vetne has
14 arrived, so we do have sort of just-in-time production, but we
15 are nonetheless going to go forward as just planned.

16 JUDGE CLIFTON: Ms. Frisius, I believe this will be
17 Exhibit 126; is that correct?

18 MS. FRISIUS: Yes.

19 JUDGE CLIFTON: So I'm marking testimony of Alan Zolin,
20 part 4, as Exhibit 126.

21 (Thereafter, Exhibit Number 126, was
22 marked for identification.)

23 MR. ENGLISH: And I note, your Honor, that it is a cover
24 sheet and a one-page statement on the back, so there is only
25 one piece of paper, but we are trying to conserve paper and so

1 we managed to print it on both sides.

2 JUDGE CLIFTON: And Mr. Zolin, you remain sworn. Would you
3 again state and spell your name?

4 MR. ZOLIN: My name is Alan Zolin A-L-A-N, Z-O-L-I-N.

5 JUDGE CLIFTON: Thank you. Mr. English, you may proceed.

6 DIRECT EXAMINATION

7 BY MR. ENGLISH:

8 Q. Mr. Zolin, would you read your statement, which is
9 Exhibit 126?

10 A. I shall.

11 Introduction

12 My name is Alan Zolin. I have been retained by Hilmar
13 Cheese Company to work with the Dairy Institute of California
14 (DIC) to develop an alternative proposal to Cooperative
15 Proposal 1. I have worked with the task force made up of a
16 number of representatives from DIC member companies in order to
17 develop and submit Proposal 2.

18 Description of Proposal 2 Producer Milk

19 Section 1051.13, is commonly known as the producer milk
20 section of all the FMMO's. This section, in coordination with
21 the performance standards from paragraph 7(c), defines what
22 milk may be associated with the Order. As I have stated in
23 previous testimony, the DIC working group used Order 30
24 language as a basis for Proposal 2. Proposal 2 has added a
25 reference to a 9(d) provision, I will address the 9(d)

1 provision at another time.

2 I would like to thank the USDA representative,
3 Henry Schaefer, for providing an overview of the producer milk
4 provision. We agree with Mr. Schaefer's testimony and his
5 characterization of the operational aspects.

6 In Proposal 2, we follow directly with the existing
7 Order 30 language for paragraph 13. We maintain the same
8 language for the following concepts:

9 1) Milk will be priced at the location of the plant
10 where it is first physically received.

11 2) Producer touch base requirements is one day's
12 production or 48,000 pounds of milk, whichever is the smallest.

13 3) To be eligible for diversion, touch base must be
14 met anytime in the first month the dairy farmer is a producer.

15 4) Re-association with the market is necessary if a
16 dairy farmer loses producer status.

17 5) Milk that is diverted shall be priced at the
18 location of the plant to which diverted.

19 6) Producers under a state pricing program.

20 7) 125 Rule will be applied for repooling milk.

21 8) Penalty for evading provisions-Section
22 1051.13(f)(4).

23 JUDGE CLIFTON: Now, just so that that will be typed right,
24 that's 1051.13(f)4.

25 MR. ZOLIN: Correct. 1051.13(f)4. The diversion

1 limitations that are part of Proposal 2 are reciprocal of the
2 base shipping percentage (10 percent) described in 7(c).
3 (100 minus shipping percentage). This relationship would also
4 apply for any of the bracketed adjustments that may occur in
5 7(c)(2). And finally, in the Market Administrator's (MA) and,
6 I'm sorry, let me start again. And finally, if the
7 Market Administrator (MA) makes an adjustment to the shipping
8 requirements under 1051.7(c), that adjusted shipping
9 requirement should be used in determining the diversion limits.
10 This concludes my testimony.

11 BY MR. ENGLISH:

12 Q. So let me first, you used the parentheses and I think
13 you said a hundred minus shipping percentage, you meant a
14 hundred percent minus shipping percentage, correct?

15 A. That is correct.

16 Q. It is correct as written?

17 A. It is correct as written. A hundred percent minus
18 shipping percentage.

19 Q. So let me just go up and discuss just a few of these
20 elements. First, the touch base requirement as one, as the
21 smaller of one days' production or 40,000 pounds of milk.

22 JUDGE CLIFTON: What did you just say, Mr. English?

23 MR. ENGLISH: I'm up in number 2, and I asked him about the
24 genesis of the producer touch base requirement as being the
25 smaller of one days' production or the 40,000 pounds of milk.

1 JUDGE CLIFTON: See, each time you say that number, it
2 sounds to me like you saying 40,000, but you are saying 48.

3 MR. ENGLISH: 48,000.

4 JUDGE CLIFTON: Good. All right.

5 MR. ENGLISH: Apparently the court reporter agrees with
6 you, your Honor.

7 JUDGE CLIFTON: Yeah, you treat numbers so casually. I
8 would like you to dwell on the numbers.

9 MR. ENGLISH: 48,000.

10 JUDGE CLIFTON: Thank you very much.

11 BY MR. ENGLISH:

12 Q. So what is the genesis of the 48,000 pounds?

13 A. The 48,000 pounds is what the working group determined
14 was the average load size of a load of milk coming off of a
15 farm, both in California and in other parts of the country. So
16 again, to identify 48,000 as a number would be appropriate for
17 a producer that has multiple loads of milk coming off the farm,
18 that would be an appropriate number to meet the touch base
19 requirements.

20 Q. And then for an entity that has less than that, it
21 won't have to do as much, I mean if it's, if it has 24,000, it
22 doesn't have to ship two loads, it just ships its one days'
23 production, correct?

24 A. Correct. And again, I stated that the Order 30
25 provisions were the guidelines that the group used in

1 Wisconsin, it is common for producers, multiple producers to be
2 commingled on a truck to bring that milk to market. We were
3 looking at the smallest, whichever is smallest portion to
4 handle a producer that does not produce one truck load of milk
5 a day.

6 Q. And then to some extent you did a little, what I may
7 call shortcutting, so if you go down to number 6, you
8 referenced producer under state pricing program, which is not
9 exactly a sentence or even a phrase, so much for just-in-time
10 production. But I assume that that's referring to Section
11 13(e) which, go ahead and describe it.

12 A. That's correct. This would be in paragraph (e) in
13 Section 13, which describes a producer that's subject to
14 inclusion in a market-wide equalization pool and under the
15 authority of a state government that maintains market-wide
16 pooling of returns.

17 Q. And we have had some discussion in this hearing about
18 how that provision came about in other Federal Orders, correct?

19 A. Correct.

20 Q. And the idea is to have the same limit so that you
21 can't effectively pool milk both on a Federal Order and a State
22 Order at the same time?

23 A. That's correct.

24 Q. Okay. So turning to number 7, you call it the 125 Rule
25 be applied for re-pooling milk. So please describe that, and

1 also tell us about the month of March.

2 A. Okay. The 125 Rule is -- is a provision that I believe
3 well, I believe it started in Order 30 or it was first
4 introduced in Order 30, where it was determined that if a
5 handler depooled milk.

6 Q. Or elects not to pool?

7 A. Thank you, or elects not to pool milk, that in order to
8 reassociate that milk back with the pool, there would be a
9 limit of 125 percent of the previous month's milk pooled. So
10 for example, if a handler had 100 pounds of producer milk in
11 month A, depool, determine not to associate 20 pounds of milk
12 in the next month, which would bring his producer receipts back
13 down, or down to 80. In the next month he would only be able
14 to reassociate 125 percent of that 80 pound number, which would
15 bring you back to 100 pounds of milk.

16 In the case of, I think you said March, because of the
17 number of days associated with February, the 135 percent is
18 applied for the reassociation in the month of March.

19 Q. Now, I think from some questions Mr. Beshore asked
20 earlier, have you looked at that and determined the
21 appropriateness of those levels if milk does not elect to pool
22 in one month and then the repooling limits?

23 A. I have looked at it, our task force looked at it, we
24 looked at the decision made, recommended in the Final Decision
25 for Order 30 as the 125 percentage being an appropriate

1 percentage to give consequences, I think the word was used, for
2 not associating milk with the pool and then trying to
3 reassociate. The group agreed that the 125 Rule would be
4 appropriate and serve the same purpose as it does in the
5 Chicago Regional Market. It would serve the same purpose in
6 California.

7 Q. And finally, turning briefly to number 8, which is the
8 penalty for evading provisions, which is, as Judge Clifton
9 noted 1051.13(f)4. You and I already discussed that a little
10 bit last week, I guess, correct?

11 A. Correct.

12 Q. And so whether some rewording, if necessary, is there,
13 or otherwise giving us what one might call Administrative Rule
14 Making history as opposed to Legislative History, you would
15 agree in response to some of the questions from Mr. Beshore to
16 other witnesses, that if a handler, or even a group of handlers
17 have blocks of milk that they attempt to stay on the pool with
18 one block and move another block off on Class III or IV, or use
19 the two blocks to do that, that this provision ought to be used
20 to prevent that kind of situation?

21 A. I would agree with that.

22 Q. I have no further questions, your Honor, I move
23 admission of Exhibit 126.

24 JUDGE CLIFTON: Does anyone wish to question Mr. Zolin
25 before determining whether you object to the admission of

1 Exhibit 126? No one. Is there any objection to the admission
2 of into evidence of Exhibit 126? There are none. Exhibit 126
3 is admitted into evidence.

4 (Thereafter, Exhibit Number 126, was
5 received into evidence.)

6 MR. ENGLISH: Thank you, your Honor. And the witness is
7 available for further examination.

8 JUDGE CLIFTON: Mr. Beshore?

9 MR. BESHORE: Mr. Zolin, are you going to come back later
10 with the modification of the performance requirements under
11 Section 7(c) that we talked about the other day?

12 MR. ZOLIN: I wasn't here all the time, Mr. Beshore, so
13 when you mention the modifications, I might have to consult
14 with the Dairy Institute attorney to find out what those
15 modifications were.

16 MR. BESHORE: Well, we haven't heard them yet, that's what
17 I was asking about.

18 JUDGE CLIFTON: I think you, yourself, Mr. Zolin, talked
19 about the fact that the numbers needed, the task force numbers
20 needed a little more work so that there wasn't too much
21 shipping required.

22 Do you recall this?

23 MR. ZOLIN: I do recall the, as we look at how we, I guess
24 I'll use the word, add quota performance and 7(c) shipping
25 performance, I do remember that, sir.

1 MR. BESHORE: So my question was, are you going to testify
2 later on any proposed revisions to those requirements?

3 MR. ZOLIN: Yes, I will.

4 MR. BESHORE: Okay. I would like to defer, if I might,
5 your Honor, cross-examination with respect to the producer milk
6 terms here in Exhibit 126 until we have the refined performance
7 requirements that we just referenced because they -- they go
8 together in my mind, and I would like to just cross-examine
9 once about those proposed requirements.

10 JUDGE CLIFTON: Mr. English, your response?

11 MR. ENGLISH: I don't object. I'm not sure I agree they go
12 together in quite the same way, but it doesn't matter, I don't
13 object, so we're fine.

14 JUDGE CLIFTON: All right. Good. I tend to agree with
15 Mr. Beshore, looks to me like they go together, but when we
16 have them, then we'll know whether they go together or not.
17 But, yes, Mr. Beshore, you may reserve your cross-examination
18 of Mr. Zolin on this issue, until we have that issue.

19 MR. BESHORE: Thank you.

20 JUDGE CLIFTON: Who next has questions for Mr. Zolin?
21 Ms. Taylor?

22 CROSS-EXAMINATION

23 BY MS. TAYLOR:

24 Q. Good morning still, Mr. Zolin.

25 A. Good morning.

1 Q. Just a question on your repooling limits of 125.

2 JUDGE CLIFTON: You know, what we may have to do since we
3 have both a Sue Taylor and an Erin Taylor, we may have to have
4 you say who you are.

5 MS. TAYLOR: This is Erin Taylor, USDA.

6 BY MS. TAYLOR:

7 Q. Just a question on your repooling limits of 125 and 135
8 percent. You said that the working committee worked together
9 and decided that 125 percent was an appropriate number. Could
10 you just go a little more into what you factored in to decide
11 that 125 percent was appropriate and perhaps what the
12 Department should look for if it decides to put in that
13 repooling limits are appropriate in deciding what the specific
14 number should be?

15 A. Okay. The committee specifically looked at the
16 Order 30 recommended and Final Decision that implemented the
17 125 percent rule for that market. Again, we felt a comparison
18 of California with the Order 30 market, based on Class I
19 utilization, as well as the amount of manufacturing milk in the
20 market, was, again, an indicator that the market's could
21 operate similarly. The working committee is made up of a
22 number of companies that pool milk in Order 30, Saputo,
23 Dean Foods, Kraft, are all companies that had pooled milk in
24 Order 30 before and have a familiarity with the working aspects
25 of it. We did evaluate 115 percent Rule to see how that would

1 work in the marketplace, and the determined that that would be
2 a little bit, it would be more difficult to reassociate which
3 could, at times, be problematic. So based on, again, market
4 size, market utilization, and the response, the consequences
5 that were associated with not associating milk with the market,
6 we felt the 125 Rule was an appropriate standard to use.

7 Q. Okay. Thank you. And one final question. And you
8 might have touched on this with Mr. English, and I was reading
9 so I didn't quite hear every question. But with your limit on
10 diversions to not on pool plants located inside the marketing
11 area, just confirming that that is the intent it can only go to
12 the nonpool plant in the marketing area?

13 A. That's correct.

14 Q. That's all I have. Thank you.

15 JUDGE CLIFTON: Who else has questions for Mr. Zolin at
16 this time? I see none. Any redirect, Mr. English?

17 MR. ENGLISH: No, your Honor.

18 JUDGE CLIFTON: All right. No redirect. Mr. Zolin, you
19 may step down. Thank you so much.

20 MR. ENGLISH: Your Honor, at this time, while distribution
21 is going on, although I think a lot of the distribution has
22 already gone on, Mr. Vetne will return to the stand for what is
23 effectively his Part 2, pricing of Grade A milk issues and we
24 have a statement to be marked, it's eight-pages, although it is
25 really six-plus pages with a references page at the end, and

1 then a separate document which is those references, a 45-page
2 document. I would like to have those marked.

3 JUDGE CLIFTON: Let's see, we want to start with the
4 statement, and that is the shorter document.

5 Ms. Frisius, am I correct that this will be Exhibit 127

6 MS. FRISIUS: Yes.

7 JUDGE CLIFTON: All right. The smaller document will be
8 127.

9 (Thereafter, Exhibit Number 127, was
10 marked for identification.)

11 JUDGE CLIFTON: And the thicker document will be 128.

12 (Thereafter, Exhibit Number 128, was
13 marked for identification.)

14 JUDGE CLIFTON: Mr. Vetne, you remain sworn. Would you
15 again state and spell your name?

16 MR. VETNE: John Vetne, V-E-T-N-E.

17 DIRECT EXAMINATION

18 BY MR. ENGLISH:

19 Q. Mr. Vetne, will you please read your statement?

20 A. Yeah, I can do that. This is the entitled:

21 The Second Statement of John H. Vetne on FMMO Policy
22 Evolution: Pricing Grade A Milk Used to Manufacture Dairy
23 Products

24 In my prior statement, I outlined the evolution of
25 orderly marketing concepts applied by USDA to economic

1 regulation under Federal Milk Marketing Orders and introduced
2 the agency's application of supply and demand pricing under
3 7 U.S.C. 608c(18) to individual marketing areas. The
4 discussion highlighted the views of leading dairy experts who
5 have guided the evolution of USDA's Milk Marketing Order
6 policies, conforming to the instruction of the Secretary's
7 Judicial Officer concerning the role of such expert views --
8 the role such expert views have in Marketing Order development
9 and review.

10 In this statement I will review the evolution of
11 surplus milk pricing policies under FMMO's. In yesterday's
12 testimony, Bill Schiek traced much of this history and
13 identified the culmination of the agency's surplus milk pricing
14 policy as of FMMO Reform in 1999, which bears repetition:

15 "The importance of using minimum prices that are
16 market clearing for milk used to make cheese and
17 butter/nonfat dry milk cannot be overstated. The
18 prices for milk used to produce these products
19 must reflect supply and demand --"

20 JUDGE CLIFTON: I'm sorry, because this is a quote, I want
21 you to do that sentence again.

22 MR. VETNE:

23 "The prices for milk used in these products must
24 reflect supply and demand, and must not exceed a
25 level that would require handlers to pay more for

1 milk than needed to clear the market and make a
2 profit."

3 And that's from 64 Fed. Reg. 16026 at page 16094-95,
4 April 2, 1999.

5 For "clear the market" pricing, remember that minimum
6 pricing is guided by Section 608c(18), and the focus of that
7 section is on supply and demand for milk and milk products.
8 "In the marketing area to which the contemplated" Milk Order
9 relates.

10 USDA's post-FMMO Reform "clear the market" policy was
11 tested in 2001 and 2002 when manufactured dairy product make
12 allowances were addressed in a hearing. In that proceeding,
13 some producer groups urged USDA to provide more revenue to
14 producers by establishing make allowances at a rate less than
15 the "clear the market and make a profit" objective. The
16 producers observed that many dairy farmers were suffering
17 financial distress and experienced cost of production in excess
18 of milk revenue. The Secretary responded as follows:

19 There appears to be no logical or economic reason
20 for changing make allowances for processing plants
21 because of a change in the cost of producing milk.
22 If milk's to clear the market, clients must be
23 willing to accept it. Make allowances that
24 decline as a result of increasing milk production
25 costs would squeeze plant margins and

1 manufacturers will have to choose between not
2 receiving milk, refusing to receive pooled milk,
3 or paying less than order prices to cooperative
4 associations for milk used in manufactured
5 products. None of these outcomes would be in the
6 best long-term interests of dairy farmers,
7 processors, or consumers. Many dairy farmers,
8 facing increased costs of production would have to
9 find alternative outlets for their milk.

10 And that ends the quote. That's found at
11 67 Fed. Reg. 67905 at page 67915, published November 7, 2002.

12 In the 1962 Nourse -- the 1962 Nourse Report explains
13 the classified pricing system and pricing policies in Part 2 of
14 that report. On pages II-1-6 to 7, the Report explains that
15 national supply and demand drive hard dairy product prices, but
16 market clearing prices for milk must be assessed on a local
17 basis. And I quote from the Nourse report:

18 JUDGE CLIFTON: Go slowly, please.

19 MR. VETNE:

20 Passing from Class I to the lowest price
21 classification, it is to be noted that, if the
22 market price structure is to permit the marketing
23 of the entire supply available to a market, price
24 levels for surplus milk sufficiently remunerative
25 to raw milk buyers to assure handling of such milk

1 should be established for the lowest value
2 classification. From this, it follows that the
3 group of products included in this lowest price
4 category (as well as the prices established for
5 this class) depends upon the supply of milk and
6 excess of Class I requirements, the products that
7 local market processors can manufacture from these
8 excesses, and the prices that can be realized for
9 these products. Historically, Order prices had
10 been lowest for milk used for the relatively
11 highly concentrated products such as butter and
12 the so-called "hard" cheeses. The market prices
13 for these products (which influences the prices
14 producers can charge handlers) are largely
15 determined on the basis of supply and demand
16 forces of national scope) including government
17 outlets under the price support program.

18 End of quotation. The Nourse Report described product
19 price formulas and competitive milk price formulas for surplus
20 milk pricing. At the end of its discussion on surplus milk
21 pricing, the Nourse Committee cautioned (at pp. II-1-20to21) on
22 the need to continuously reassess pricing levels for surplus
23 milk as conditions change from time to time.

24 And I'm starting a quote from the Nourse Report:

25 While there are various types of formulas that are

1 used in establishing surplus prices, no formula so
2 far developed, has given the right answer all the
3 time. The final judgment in regard to the surplus
4 price, must be based on the developments in the
5 market. A formula may yield fairly satisfactory
6 results for a considerable period of time and then
7 yield wrong prices which cause undue hardship to
8 some elements in the market, and yield windfalls
9 to others. Accordingly, close and continuous
10 attention must be devoted to surplus pricing, not
11 only in relation to internal market developments,
12 but also in respect to the relationships between
13 surplus prices in adjacent fluid markets and
14 national manufactured dairy products markets.

15 JUDGE CLIFTON: And --

16 MR. VETNE: And that ends the quote.

17 JUDGE CLIFTON: And the last phrase there beginning with
18 adjacent is how?

19 MR. VETNE: Adjacent fluid milk markets and national
20 manufactured dairy products markets.

21 JUDGE CLIFTON: Thank you.

22 MR. VETNE: End of quote.

23 A decade after the Nourse Report, USDA's Milk Pricing
24 Advisory Committee set the stage for use of product price
25 formulas to fix prices for surplus milk. Part 2 of the

1 Advisory Committee Report recommended that product price
2 formulas be used to price Grade A milk used to produce butter,
3 powder, and cheese in the absence of reliable Grade B survey
4 competitive prices (M-W) because the Grade B milk volume was
5 rapidly dwindling. Following the foundation laid in the Nourse
6 Report, the Advisory Committee explained the fundamental
7 principles for surplus milk pricing.

8 And again, I'm quoting now: "In established such a
9 substitute -- "

10 JUDGE CLIFTON: Start again, please.

11 MR. VETNE:

12 In establishing such a substitute [for the M-W]
13 procedure, the following principles must be
14 recognized: The residual market for manufactured
15 products must clear. To do this, product prices
16 must be flexible. Surplus milk prices must, in
17 turn, closely track revenues for manufacture
18 products or economic distortions will result.

19 Then, a bit later in that same report, continuing with
20 quote:

21 The prices of the so-called "hard" manufactured
22 products (butter, cheese, and nonfat dry milk) are
23 established in a national market. Handlers
24 producing such products have no opportunity to
25 adjust prices at which they sell such products, to

1 assure adequate margins relative to the price for
2 surplus milk established under a Milk Order.
3 Therefore, the level of surplus price relative to
4 the more or less fixed revenues on manufactured
5 products as determined by the national market,
6 tends to prescribe the margins a processor
7 realizes on surplus milk. If all the reserve
8 supplies of milk not needed for fluid use are to
9 be marketed in an orderly way, and the market
10 cleared, the price for surplus milk must be
11 closely related to net revenues from the sale of
12 manufactured products after the deduction of
13 processing costs.

14 Recognizing the importance of a reasonable make
15 allowance to assure manufacturer margins, and thereby willing
16 market clearing capacity, the Advisory Committee cautioned that
17 constant review and frequent adjustments would be required.

18 Starting a new quote from the Advisory Committee
19 Report, part 2:

20 One of the most troublesome aspects of developing
21 a product price formula is obtaining an adequate
22 basis for arriving at a measure of manufacturing
23 costs or make allowances and keeping them up to
24 date -- the words keeping them up to date are
25 underscored, and that underscoring appeared in the

1 original that I downloaded from the Internet.
2 The Department and the industry cannot shirk this
3 responsibility. The committee considers -- and
4 that should be "an" not "and". The committee
5 considers an annual review of make allowances on a
6 verifiable basis to be necessary in order to keep
7 up inflation and the effects of technological
8 change as an input to Federal Order decisions.
9 And that ends the quote.

10 JUDGE CLIFTON: And let me pause. Ms. Frisius, you have
11 got it. Thank you very much. We're just striking a "D" so
12 that the word "and" becomes "an" forth line up in that quote on
13 page 4.

14 MR. VETNE: Thank you, your Honor.

15 The guidance provided by the Advisory Committee has
16 largely been followed by USDA in product price formulas adopted
17 in the 1990's for butter and powder, and in FMMO Reform, but
18 review and assessment of make costs and updating of make
19 allowances, has fallen somewhat short. The current reference
20 product price formula for Class III and IV milk was fixed for
21 federally-regulated markets at the time of FMMO Reform in 1999.
22 A significant contribution --

23 JUDGE CLIFTON: Please read that sentence again.

24 MR. VETNE: Okay.

25 The current reference product price formula for

1 Class III and IV milk, was fixed for federally-regulated milk
2 markets at the time of FMMO Reform in 1999. A significant
3 contribution to the agency's class pricing deliberation was
4 made by the 1996 Cornell US Dairy Sector Simulator based on
5 1993 supply and demand conditions, which quantified, strike
6 the -- a price surface for Class 1 milk.

7 JUDGE CLIFTON: So you want us to strike the "S" after
8 "surface"?

9 MR. VETNE: Yeah. Please.

10 JUDGE CLIFTON: All right. Done.

11 MR. VETNE: The USDSS, that's the US Dairy Sector
12 Simulator, and the Final Reform Decision uses the initials
13 USDSS frequently. The USDSS Report also showed price surfaces
14 for milk used to produce butter, powder, and cheese.

15 For powder and butter, the lowest prices on the
16 National surface were in the West and Northwest. The 1993 NFDM
17 price surface lowest price was in Central California -- and I
18 have reproduced in the text the map from the 1996 report, which
19 is accessible online in the URL is contained in two places in
20 the statement, and this is the NFDM price surface map, and
21 heading up the map is Simulated Value of Standardized Milk at
22 Powder Plants Based on 1993 Annual Data, Preliminary.

23 Back to text. Oh, I should say, with apologies, that
24 the map that is produced here and on the following page is
25 black and white in your copy, but Ms. Frisius has a color map

1 for the originals because it appeared in color in the report,
2 so I only made four copies of the color pages.

3 JUDGE CLIFTON: We appreciate your doing that. I know when
4 you are getting these things photocopied, that takes extra care
5 and I thank you.

6 MR. VETNE: Returning to text: This generally corresponds
7 with the geographic distribution of 1993 NFDM production as
8 reported by NASS. For 1993, the national midpoint of total
9 US NFDM production, an approximate line where half of the NFDM
10 is produced to the West of the line and half to the East, was
11 along the Eastern border of California and Washington, that's
12 the state of Washington. These two states accounted for
13 545,055,000 pounds of NFDM, nearly 58 percent of total US NFDM
14 production of 947,117,000 thousand pounds.

15 JUDGE CLIFTON: So 947 million?

16 MR. VETNE: 117,000 -- it is 947,117,000 pounds. NASS
17 Dairy Products Annual Summary 1995, Exhibit 128, page 7.

18 The 1993 relationship of California NFDM production to
19 the rest of the United States was similar in 2004 and 2014.
20 NASS Dairy Products Annual Summaries, 2005 and 2015,
21 Exhibit 128, pages 13 and 19.

22 JUDGE CLIFTON: Ms. Frisius, I would like you to insert in
23 those blanks on page 5, 128 in each of them, that's the last
24 full paragraph on page 5. Mr. Vetne, you may continue to read.

25 MR. VETNE: Thank you. The 1993 USDSS price surface for

1 cheese revealed low price locations in the far Upper Midwest,
2 Southern Idaho, and in Central California.

3 JUDGE CLIFTON: Let me ask you, in the far upper
4 Upper Midwest? How should this read?

5 MR. VETNE: In the far Upper Midwest, just as written.

6 JUDGE CLIFTON: Far upper, Upper Midwest?

7 MR. VETNE: In the upper reaches of the Upper Midwest is
8 what it -- and you will see that when you turn the page, your
9 Honor. Okay.

10 JUDGE CLIFTON: Very good.

11 MR. VETNE: Southern Idaho and in Central --

12 JUDGE CLIFTON: Go ahead and start the sentence again,
13 please.

14 MR. VETNE: The 1993 USDSS price surface for cheese
15 revealed low price locations in the far Upper Midwest.

16 JUDGE CLIFTON: Do you want to read it like you have
17 written it?

18 MR. VETNE: Yes.

19 JUDGE CLIFTON: Okay. One more time. I know you are
20 operating on very little sleep.

21 MR. VETNE: Did we need to say that again? Starting the
22 sentence again.

23 The 1993 USDSS price surface for cheese revealed low
24 price locations in the far Upper Midwest --

25 JUDGE CLIFTON: I want you to say both uppers.

1 MR. VETNE: No -- I don't -- you know, right over my head.
2 As I just read it. Southern Idaho and in Central California --

3 JUDGE CLIFTON: No, no, no, not as you just read it, you
4 have never read it right.

5 MR. VETNE: I'm not reading it the way it is written, your
6 Honor, I am striking one of the uppers.

7 JUDGE CLIFTON: Okay, then. Truly? Is that what you want
8 us to do?

9 MR. VETNE: Yes, please. Yes.

10 JUDGE CLIFTON: All right. Then, Ms. Frisius, at the
11 bottom of page 5, the last line, strike the first "upper",
12 please.

13 MR. VETNE: You know, I did not see those two words. I
14 read it three times and I did not see two words there.
15 Obviously -- okay.

16 JUDGE CLIFTON: Now, I hesitate to do this, but I would
17 like you to start the sentence again.

18 MR. VETNE: The 1993 USDSS price surface for cheese
19 revealed low price locations in the far Upper Midwest, Southern
20 Idaho, and in Central California as shown on the, turn to
21 Page 6, following USDSS map.

22 And the map is produced, cut and paste from the 1996
23 report, the original of the exhibit shows this in color. And
24 it's, the map is entitled Simulated Class III Price of
25 Standardized Milk at Cheese Plants Based on 1993 Annual Data,

1 Preliminary.

2 Returning to text: The corresponding geographic
3 distribution of cheese production, as well as the subcategory
4 of cheddar cheese production in 1993, is shown in NASS dairy
5 products. The Western states produced only 23 percent of the
6 nation's cheese and 22 percent of the nation's cheddar cheese
7 in 1993.

8 The geographic midpoint was approximately in the North
9 Central areas of NASS reporting regions, that's Exhibit 128,
10 pages 3, 5, and 7, and let's turn to that right now.
11 Page 1 -- Exhibit 128, pages 3, 5, and 7, and I'll show you
12 what to look for.

13 Okay. Page 3 of the exhibit, which is a photocopy of
14 page 19 of the NASS Dairy Products Annual Summary, 1995, which
15 contains data for calendar year, I mean, 1994, which contains
16 data for calendar year 1993, shows at that time that there were
17 six geographic regions for which NASS reported various dairy
18 products. Some of the products are reported in aggregated
19 regions, some of them are reported in each region.

20 JUDGE CLIFTON: Now, I'm looking at seven regions, is that
21 what you see?

22 MR. VETNE: One, two, three, seven regions. I missed
23 New England, how could I do that? It was just sort of combined
24 in my vision with Middle Atlantic, but, yes, there were seven
25 at the time.

1 And if you'll look at the following page, which is
2 Page 4 of Exhibit 128, page 21 of the NASS Annual Summary,
3 1994, containing 1993 data, I have copied the, this page 4 is
4 butter production and it shows butter in various states, and
5 then it is aggregated by the regions, and in the middle has
6 U.S. total. If you turn to page 5, similar information.

7 JUDGE CLIFTON: I'm sorry, you have to go back for me. So
8 these regions aren't the same as on the prior page.

9 MR. VETNE: Yes, they are same as the prior page. If you
10 notice for butter, for example, there is data for
11 North Atlantic where the regions are indicated. North Atlantic
12 in this particular report would include in the map both
13 New England and Middle Atlantic, they aggregated those because
14 that's the only way they could report them, so that would be
15 North Atlantic.

16 And getting to cheese, which is on page 5 of
17 Exhibit 128, which is a copy of page 25 of the Annual NASS
18 Dairy Products, 1994 for 1993 data, you will see there are a
19 number of states for which cheese production is identified, the
20 quantity and number of plants producing those products. Near
21 the bottom there is a U.S. total, and then the aggregation for
22 the various regions is contained below that. Again,
23 North Atlantic is aggregated, New England and Middle Atlantic.
24 Each North central and West North Central is essentially what
25 we think of including the Upper Midwest, and then there's a

1 number for the West. So you can compare production in any
2 region to the U.S. total, and add up the regional totals, and
3 adjust for the states that are available to find an approximate
4 midpoint of national production. On page 6 of Exhibit 128,
5 similar information is provided for cheddar cheese for the year
6 1993, and the number of plant producing those products. And
7 using a similar approach, you can identify regional production,
8 some state production, to approximate a midpoint in the
9 United States where production is equal to the West and East of
10 that point.

11 And finally -- and finally on page 7 of Exhibit 128,
12 similar data is provided for nonfat dry milk. All the
13 information for calendar year 1993 is on one page, they
14 required less print and page space because there were fewer
15 plants and fewer individual states. Turning to text.

16 JUDGE CLIFTON: Before you continue to read, shall I ask
17 Ms. Frisius to fill in the two blanks with 128 on page 6?

18 MR. VETNE: Yes, please.

19 JUDGE CLIFTON: All right. Done. Thank you.

20 MR. VETNE: Okay. Continuing in the fifth line of the text
21 on page 6.

22 NASS dairy products data for 2004 and 2014 reveal that
23 cheese and cheddar cheese production midpoint, the cheese and
24 cheddar cheese production midpoint, is still in the Midwest,
25 NASS Central Region, even though production's share represented

1 by the West climbed to 43 percent for all cheese, and 46
2 percent for cheddar cheese in 2014 -- that's Exhibit 128,
3 Pages 9 to 11 and 15 to 17. It logically follows that an
4 average price for cheese or for cheddar cheese would
5 essentially be a Midwest price. We do not know, unfortunately,
6 whether the geographic distribution of NDPSR cheddar cheese
7 productions or survey price averages follow this pattern.

8 And the rest of the testimony is just sort of complete
9 data available, which I thought was pretty important.

10 The current list of California cheese plants that
11 contribute to this picture, that is the picture of Western and
12 California cheese production, is contained in the CDFA Dairy
13 Plant List, reproduced on pages 20 to 24 of Exhibit 128, and in
14 a CMAB list of cheese plants eligible to use the Real
15 California Seal, Exhibit 128, pages 24 to 43.

16 JUDGE CLIFTON: Pages 25?

17 MR. VETNE: 25 to 43, yes.

18 JUDGE CLIFTON: All right.

19 MR. VETNE: CMAB is California Milk Advisory Board.

20 Finally, to complete some information, and I know USDA's
21 burning to -- burning to receive, a Census Bureau Economic
22 Report showing California cheese plants grouped by employee
23 numbers is contained in the Exhibit 128, pages 44-45. And that
24 includes my contribution to the record at this point. Thank
25 you very much.

1 JUDGE CLIFTON: All right. Thank you. And Ms. Frisius,
2 will you fill in the three blanks on page 7 with the numbers
3 128? Mr. English?

4 BY MR. ENGLISH:

5 Q. Good afternoon, Mr. Vetne. Chip English.

6 A. Good -- afternoon already?

7 Q. So let me see if I can understand or take you through
8 your market discussion in the first piece of your testimony.
9 And I think, from my perspective, what I want to look at is on
10 page 2 and 3, and I just want to have you help me identify for
11 the record where it is you think that the concept of a local
12 market for clearing of the milk appears? So, for instance, on
13 page 2, in the middle of the full quote from the Nourse Report,
14 actually, it is the second quote, because they are both full,
15 it does appear to be that there's a reference to the products
16 that the local market processors can manufacture from these
17 excesses. So is that an example where a local market comes
18 into play?

19 A. Absolutely. I mean, Nourse, the Nourse Report and the
20 Milk Pricing Advisory Committee Report sort of pre-staged
21 Dr. Schiek's shortened explanation of supply and demand, dairy
22 products clear nationally, milk clears locally. Both Nourse
23 and the Advisory Committee referred to the function of the
24 national market in clearing products, and how does that
25 translate to the local market, which is, I think, your

1 question.

2 And the Nourse Report -- how does the local -- how does
3 milk clear locally? The products that the local market
4 processors can manufacture from these excesses, that's the
5 excess milk production surplus. And the prices that can be
6 realized for these products, that wouldn't make much sense
7 unless the prices realized referred back to local product
8 processors, local market processors.

9 Q. Similarly on page 3, the carry over quote, and you read
10 "the final judgment in regard to the surplus price must be
11 based on the developments in the market singular," correct?

12 A. That's the way it's written.

13 Q. Okay. And if you compare that to the closing sentence
14 of your quote, "accordingly, close and continuous attention
15 must be devoted to surplus pricing, not only in relation to
16 internal market developments," correct?

17 A. Correct.

18 Q. "-- but also in relation to adjacent fluid milk
19 markets." So that must imply there's different markets,
20 correct? It says it?

21 A. Nourse addressed marketing areas, that's what this is
22 referring to. Marketing areas and the rules governing the
23 marketed milk within marketing areas, that's --

24 Q. And finally in that sentence there's the reference to
25 "and national manufactured dairy products markets." If -- if

1 you didn't need to worry about clearing the local market, you
2 wouldn't have to have the sentence, would you? I mean, the
3 sentence structure by itself indicates and supports the point
4 you are trying to make?

5 A. Exactly. The milk clears locally, dairy products clear
6 nationally. And this is -- and this counsel's examination of
7 the local market over time to see how things might change. And
8 in California, we all know there's one significant change and
9 that is from 1993 to 2015 there has been an explosion of milk
10 used to produce cheese.

11 Q. Now, someone on the other side might say, "but, wait a
12 minute, with that explosion, isn't that captured by the NDPSR
13 reporting?" And what would your response be?

14 A. Isn't that captured?

15 Q. Well, if you have this explosion, if now you have
16 doubled effectively the percentage of milk that is produced
17 that was made from cheese relative to the other markets in the
18 West, given the weighted average in the National Dairy Products
19 Sales Report, a critic of what you are saying would say, "wait
20 a minute, we are capturing that. We're capturing that right
21 there."

22 A. Actually, I would agree that that would be captured in
23 the dairy product price average, and as the explosion
24 continues, I would expect that the midpoint, if you look at
25 geographic distribution of production, the midpoint would be

1 creeping west. So -- so that the Federal Order premium, or
2 California discount, whichever you use, for products would not
3 be as great. And notably, as the average price or midpoint
4 price creeps west, it is a price based on surfaces, which is
5 lower than the competitive price for milk used to produce
6 cheese in Minnesota and Wisconsin. It would, that western
7 moving price, would provide greater margins to Minnesota and
8 Wisconsin and other points east, plants, provide them added
9 opportunities to receive revenues from the sale of product and
10 translate that into premiums for their producers. West of the
11 line, that would not happen. Those revenues would not be
12 available for payment to producers if the price, regulated
13 price, to the far west of the line pretended to be the price
14 wherever the line is, wherever the average is.

15 Q. Well, in fact, the price or the value west of the line
16 is more appropriately part of the local market necessity for
17 clearing the market, correct?

18 A. That's the line to the west. Every market to the east
19 of the line will have product revenue translatable to producer
20 milk prices, equal to or exceeding the imputed
21 Class III price, and every point to the west of the line would
22 have product revenue insufficient to satisfy the average
23 Class III price. So the examination must be to the revenue
24 received by local manufacturers for their products. Those
25 products sold in a national marketplace, and we have had

1 discussion on how that's priced. It is priced FOB and then
2 sent East, and for which there's a transportation component.

3 Q. And, finally, you did not read into the record your
4 foot notes?

5 A. I did not. If you want me to --

6 Q. I'm not. I'm only pointing it out, and we're asking
7 them to be -- obviously it's in the, it is in the exhibit, and
8 I'm not asking, to be clear, to be put into the transcript,
9 especially now that you have finished reading the transcript.
10 Unless there's, and I don't see any in this particular case,
11 but unless you see a particular footnote that you want to
12 discuss.

13 A. Not at this point.

14 Q. Okay. Your Honor, I move the admission of Exhibit 127
15 and 128.

16 JUDGE CLIFTON: Does anyone wish to question Mr. Vetne
17 about either Exhibit 127 or Exhibit 128 before determining
18 whether you have any objection? No one. Is there any
19 objection to the admission into evidence of Exhibit 127? There
20 are none. Exhibit 127 is admitted into evidence.

21 (Thereafter, Exhibit Number 127, was
22 received into evidence.)

23 JUDGE CLIFTON: Are there any objections to the admission
24 into evidence of Exhibit 128? There are none. Exhibit 128 is
25 admitted into evidence.

1 (Thereafter, Exhibit Number 128, was
2 received into evidence.)

3 BY MR. ENGLISH:

4 Q. Anything else in the exhibit, maybe the plant list or
5 anything that you would want to talk about more before I allow
6 others to provide further examination?

7 A. I assume that questions from other people may trigger a
8 comment from me. And just, let me state that it is my
9 intention, sometime before the end of this day or maybe
10 tomorrow, to e-mail versions of my statement and the cover page
11 for the exhibits for ease of hyperlink access to interested
12 parties and participants. I'll send it to people on the list
13 and ask that you forward that so other people have the same
14 opportunity.

15 Q. Anything else before I let lose the Dogs of War?

16 A. Sit down, Chip.

17 JUDGE CLIFTON: Mr. Beshore.

18 CROSS-EXAMINATION

19 BY MR. BESHORE:

20 Q. Marvin Beshore.

21 Hi, John.

22 A. Hello, Marvin.

23 Q. Will you be testifying again in this proceeding or is
24 this the last time?

25 A. I don't think so, but there's a possibility. So you

1 better do it now.

2 Q. Okay. That's what I'll do.

3 Looking at Exhibit 128, would you agree with me that
4 all of the contents of 128 of the list, on the front of it are
5 documents that are routinely accepted into the record of these
6 proceedings, as requests for official notice?

7 A. Absolutely.

8 Q. And looking at 127, the last page the references, would
9 you agree to the same question, that all of those references,
10 and I think that includes everything in the foot notes, are
11 documents that are routinely accepted into the record of these
12 proceedings on official notice?

13 A. Yes, for the most part. The only maybe gray area one,
14 would be the the Cornell Study Report from 1991, called
15 Geographic Price Relationships, which is the kind of document
16 that are routinely relied upon by analysts that appear, and --

17 Q. That's a university publication?

18 A. That's a university publication, yes. So I think it's
19 officially noticeable.

20 Q. Okay.

21 A. And it might even qualify as an ancient document.

22 Q. Okay. So with that, I would like you, then, to take me
23 through Exhibit 127, and identify for me portions of your
24 comments in 127 that could not be made on brief, as opposed to
25 in testimony, that require testimony from the witness stand.

1 A. Require? Anything that is officially noticeable is
2 facts, opinion, analysis, or history, and this contains a
3 combination of all -- all those things -- that are made part of
4 the record somehow. I elected to highlight and focus on those
5 sections from these documents. I haven't asked, maybe it would
6 be a good idea to take official notice of the whole thing. I
7 think everybody can, and should be able to refer to any of
8 these publications for purposes of briefing that hasn't been
9 done yet. So the chair I'm sitting in is, and the, is a
10 vehicle to provide these facts, including historical facts,
11 policy facts, analytical facts for the record, so that's what I
12 have done. Sort of similar to reading pages and pages from the
13 Federal Register as the Proponents did early in their
14 testimony. I think that's fair.

15 Q. So it's fair because it's tit-for-tat?

16 A. No, that is not.

17 Q. Okay. So let me go back to my question.

18 A. Yes.

19 Q. Assuming that all of these documents had been accepted
20 into this record as officially noticed, I want you to identify
21 for me what, by line, what in Exhibit 127 could not have been
22 said, argued in the same manner in a post-hearing brief.

23 A. Okay.

24 JUDGE CLIFTON: Let me interrupt for just a minute. Are
25 you moving that we take judicial notice of all of them? It

1 hasn't been moved at this point.

2 MR. BESHORE: No, I'm not, but they have been accepted into
3 the record this way, I don't have any problem --

4 JUDGE CLIFTON: They have been -- what has been accepted
5 into the record?

6 MR. BESHORE: The --

7 JUDGE CLIFTON: Little excerpts of them, right?

8 MR. BESHORE: Yes, the Exhibits 127 and 128.

9 JUDGE CLIFTON: Right.

10 MR. BESHORE: Right.

11 JUDGE CLIFTON: But that's a whole different thing than our
12 taking judicial notice of every document that's cited. So I
13 don't understand your question.

14 MR. VETNE: I do.

15 JUDGE CLIFTON: All right. Go ahead, then.

16 MR. BESHORE: If I might, we, by informal agreement,
17 counsel at the beginning of the hearing, we deferred requesting
18 official notice of documents until the end as a matter, or
19 towards the end, as a matter of practice and simplicity. There
20 are going to be lots of documents officially noticed, probably
21 by mutual request, many of these being among them.

22 JUDGE CLIFTON: All right. As long as counsel remember my
23 rule, that everything that I judicially notice, officially
24 notice, that's what I get to do, officially notice, I have a
25 hard copy. Even if it's from a website. Because web sites

1 change their content, and I want to know what it is that we
2 officially noticed. So as long as you remember that ground
3 rule. Okay. I'll get out of my interfering with your
4 question. And Mr. Vetne, you may answer.

5 MR. VETNE: Yes. Your Honor, the way I understand the
6 question is, I believe Mr. Beshore is chastising me for
7 including in a statement things that could be officially
8 noticed --

9 MR. BESHORE: No.

10 MR. VETNE: -- and argued. Maybe that's not correct, but
11 I'll tell you why I excerpted them here, which I think is
12 important for an answer to your question.

13 JUDGE CLIFTON: No, I think you are on the wrong track.
14 He's wondering why this is from the witness stand instead of in
15 a brief.

16 MR. BESHORE: Precisely.

17 MR. VETNE: And that's the chastisement I had in mind.

18 MR. BESHORE: That has nothing do with the documents being
19 officially noticed, John.

20 MR. VETNE: Yes. Here's why it is important. We're here
21 in a public -- we are here in a public forum and uniquely, and
22 I hope not uniquely for the future, a lot of the dairy industry
23 is paying attention to what happens here. The focus from,
24 whether it's CDFA documents, USDA documents, historical
25 documents, policy analysis, the focus that we give at this, at

1 this hearing, helps develop the record. And I think
2 importantly, not only helps people understand what the parties'
3 approach and focus is, it helps AMS personnel in a very unique
4 proceeding, the first Federal Milk Order Promulgation
5 Proceeding in what, 25 years, the last one being in 1990. That
6 is the importance of doing it in this, in this forum, rather
7 than simply referring to the brief. You have attention, you
8 have focus, and you develop an understanding of how this fits
9 in to the facts. I have said before that if this, if this were
10 a trial, it could probably be done in a week. It would be just
11 facts. It wouldn't be some of those connecting the dots that
12 require reference to prior Federal Registers or NASS data or
13 CDFA data, it just take official notice of everything, go home
14 and write your brief. Might take less than a week. So that's
15 my objective.

16 BY MR. BESHORE:

17 Q. Okay. Now, you have told me why you have presented
18 Exhibit 127 in this way, you have not stated what, if anything,
19 in Exhibit 127 could not have been presented in a brief, but
20 had to be presented from the witness stand.

21 A. Oh, you know, it would be difficult, now the history
22 stuff could have been exclusively briefed, the policy history,
23 Federal Register history that all of us have undertaken, but
24 the juxtaposition here of USDSS price surfacing and NASS dairy
25 products geographic distribution, is something I had not looked

1 at, and I needed to look at that and articulate it and put it
2 together, and then have that observation tested, perhaps, by
3 cross-examination or direct examination. I think that's, that
4 would be very difficult to do in the first instance, in a
5 brief. It is better for the record and better for me to do it
6 in this manner in this form.

7 Q. So you are saying there's something in 127 that could
8 not have been expressed in the same typeset and narrative in a
9 brief?

10 A. I beg your pardon?

11 Q. Did you say that there, did you identify something in
12 127 that could not have been presented with the exact same
13 typeset, and narrative, and --

14 A. I'm saying that -- I'm saying that the comparison of
15 data, the USDSS, the NASS data, production distribution would
16 be more difficult to present and understand in a briefing
17 format, but I do not understand. The purpose here is to, you
18 know, develop facts relating to marketing of milk and products
19 in California. And I do not understand how questions relating
20 to presentation alternatives, whether brief or by witness, will
21 lead to relevant information.

22 Q. Okay. So if I understand it, your purpose and desire
23 is that by reading Exhibit 127 into the record and answering
24 leading questions from Mr. English about it, you hope that you
25 will have more impact in this proceeding than if you had

1 presented the same thing in a brief?

2 MR. ENGLISH: Mr. Beshore may have inadvertently forgotten
3 that Mr. Vetne said "tested by examination" which of course
4 would be much more than by me. And you know, I could go
5 through this document line by line. I think at some point this
6 questioning is more argumentative than questioning. But I do
7 think that omitting the fact that Mr. Vetne specifically said,
8 answering questions about it so people can test it is the words
9 he used, was left out.

10 JUDGE CLIFTON: I would like to chime in with my two cents'
11 worth here. I understand exactly where Mr. Beshore is coming
12 from. We are basically court-like in this Town Hall meeting.
13 And so normally, lawyers, I'm going to start with lawyers, I
14 realize Mr. Vetne is retired and he's a representative, but
15 normally lawyers are somewhat hobbled because they draw out
16 facts through witnesses, and then they make their arguments to
17 the jury, or in briefs, separately. It is a little
18 uncomfortable for those of us who are law-trained to see a
19 presentation from the witness stand that looks like a brief.
20 It's a mixing of the fact-finding that goes on from
21 presentation of evidence, and the legal analysis that is
22 applied to those facts that normally comes in from the briefs.
23 So I can understand why he's asking the question.

24 It also puts others at a little bit of a disadvantage
25 if they don't get to be both representative and witness.

1 I so admire the history and the knowledge of all of you who are
2 here, and particularly the lawyers, because they have been in
3 multiple proceedings. But we have done a lot of things here
4 that take longer for the presentation of "just the facts",
5 that's in quotes, "just the facts". For example, if this were
6 a trial, nobody would have been allowed to read in his written
7 statement, he would have identified it, it would have been
8 admitted as evidence, and the people listening in on audio feed
9 would have no idea what was presented. Nobody would until the
10 end.

11 That's not the way we're doing it. We're doing it, as
12 Mr. Vetne says, in a way to try to grasp it while we're still
13 here. There is an advantage to that. And that is, we can ask
14 more intelligent questions of all of the fact witnesses.

15 So I personally am very grateful for Exhibits 127 and
16 128. If I were deciding this case, it would have helped to
17 have little bitty excerpts from these historic documents that
18 have been mentioned by several witnesses and that most of us
19 have never read, so that's my two cents' worth.

20 I certainly understand Mr. Beshore's discomfort with
21 this coming in the same way, for example, as an Economist's
22 analysis comes in. All right. That's my two cents' worth.

23 Now, do you remember the question, Mr. Vetne?

24 MR. VETNE: I do not.

25 MR. BESHORE: I withdraw the question. I have no further

1 questions.

2 JUDGE CLIFTON: Thank you, Mr. Beshore, I do appreciate
3 that. All right. Who else has questions for Mr. Vetne?
4 Mr. Miltner?

5 CROSS-EXAMINATION

6 BY MR. MILTNER:

7 Q. Ryan Miltner, counsel for Select Milk Producers.

8 John, we have had about at least two days', probably
9 more, testimony specifically about cheese manufacturing costs
10 and whey processing in particular. Is your statement here
11 directed principally at the Class III formula?

12 A. I would say it's directed at Class III and IV pricing,
13 but as I have been sitting here and perceived the issues and
14 existing pricings, I think the bigger problem is in the
15 Class III pricing. And as you have noted every morning when we
16 get up and introduce ourselves, I'm a consultant and a
17 representative for Hilmar Cheese, so that has to be important.
18 But as we said in the very first day, you know, this is about
19 cheese prices, milk for cheese pricing, and it is about the
20 whey factor in milk for cheese pricing, so that's why we're
21 here. So I wanted to focus on the evolution of policies with
22 respect to surplus milk pricing and apply them to pricing of
23 milk used to produce cheese.

24 Q. Define for us, if you would, what you mean when you
25 refer to surplus milk?

1 A. Oh, surplus milk, as I used it here, simply employs the
2 term used by Ed Nourse and his committee, that they used the
3 term surplus milk as applicable to any used other than Class I.
4 I think we have come to our, the industry's, perspective has
5 evolved to a point where we're looking at milk used to produce
6 butter, powder, and cheese as surplus, and even some of that is
7 necessary to balance fluid markets, so surplus products would
8 be Class III and IV products.

9 Q. But I hear you also say that not necessarily all
10 Class III products or all Class IV products are surplus.

11 A. They are surplus -- well, obviously, shrinkage is not
12 surplus, it gets in Class III. But they are surplus, but the
13 surplus, seasonal, weekend it's milk not needed by the fluid
14 market, either on a particular day, a particular week, a
15 particular month, a particular season, or in the case of
16 markets like California and the Upper Midwest, never needed.

17 Q. So it really -- so in the context of your testimony, it
18 really is any milk that doesn't go into Class I, you would
19 refer to that as surplus?

20 A. I would refer to that as surplus because that's the way
21 Ed Nourse and the Advisory Committee referred to it.

22 Q. Okay. If you would look at page 2 of your statement,
23 please. What I'm looking at carries over actually to page 3.
24 The quoted sentence reads: "While there are various types of
25 formulas that are used in establishing surplus prices," and

1 then it -- it goes on, similarly, "surplus prices" there would
2 refer to the prices for any class of milk other than Class I?
3 Is that how you read that?

4 A. That I believe was the context of the, in the Nourse
5 Report, yes.

6 Q. Okay. And so we're clear, that's referring to the
7 price for the milk rather than the price of the product --

8 A. Absolutely.

9 Q. -- produced?

10 A. Yes, classified price. This comes in the section on
11 classified pricing --

12 Q. Okay.

13 A. -- of milk.

14 Q. Let's look at the next, the next quote on page 3.

15 A. By the way, I heard from a dairy farmer in Tennessee
16 who has been listening in, and he commented in an e-mail that
17 they had their first cold snap and the flies are gone.

18 Q. Mr. Sumner is a lucky guy.

19 A. That's exactly who it was.

20 Q. And because the mic didn't pick all that up,
21 Mr. Sumners, there was general laughter in the room when I
22 mentioned your name, only because we all know you are listening
23 in attentively.

24 Okay. So the next quoted section, it is on page 3,
25 there's another term that I would like for you to expound upon

1 for us. It begins in the second line, and it reads, "the
2 residual market for manufactured products must clear." So in
3 that, in the context of that quote, what is the residual market
4 being referred to?

5 A. Well, it refers to manufactured products, which are
6 produced with residual milk in the milk shed. It combines the
7 two, that's my read of this.

8 Q. So is residual milk the same as surplus milk?

9 A. I think in this context there are a lot of terms that
10 we use interchangeably and synonymously. Remember,
11 Mr. Miltner, that Part 2 of the Advisory Committee Report was
12 focused on a process and a methodology to price milk used to
13 produce manufactured products at a time when there would be no
14 more M-W survey price available.

15 Q. Do you have, do you happen to have a copy of that
16 report on your electronic device there?

17 A. Maybe. Milk Policy Pricing and Procedures, Part 2,
18 Alternative Pricing Procedures. Yes, I do.

19 Q. Okay. Could you go to the 11 page of that, which I
20 believe is actually the numbered page 7.

21 A. That helps, pdf page 11, correct?

22 Q. Correct.

23 A. Yes.

24 Q. The first words on the page I'm looking at are "the
25 impact of price support decisions," are we looking at the same

1 page?

2 A. We are.

3 Q. Let's look at the second paragraph, the second
4 sentence, and I will read it, I'll read the section I'm looking
5 at because I think we may be some of the only folks that have
6 copies of this in front of us.

7 "During the 1970 through '72 period, returns from
8 cheese were higher than from butter and powder. Butter and
9 powder was, therefore, the lowest revenue-generating use. It
10 was, therefore, the true residual market for milk. It can be
11 argued that it is, therefore, the best reflector of industry
12 supply/demand conditions."

13 A. Yes.

14 Q. Okay. So isn't the report actually saying that it is
15 the product which returns the lowest overall revenue that is
16 the residual product in the residual market?

17 A. Well, remember this, that the Federal Order pricing
18 system, at the time this was written, had a Class III price
19 that included butter, nonfat dry milk, and cheese, there was no
20 separation of those two, so producers, cooperatives had an
21 incentive to market milk to its highest and best use because
22 that provided the greatest revenue return within that, that
23 lower class, but that lower class did not have two separate
24 regulated prices. And I think Sue Taylor talked about this in
25 her prior statement. She talked about the separation of taking

1 nonfat dry milk and butter out of Class III inhibited the
2 process of, first, having milk flow to its highest and best
3 use. And secondly, inhibited the market correction whereby
4 those two prices come back together, if they ever do.

5 So where you have a product that, a market for milk
6 that returns more than an alternative market, you put as much
7 into that as you can. First, Class I, Class II, cheese in this
8 case, and everything else that's left over that you can't get a
9 better return for is a residual use. That is no longer perhaps
10 true in the same way, because under the current system,
11 producers, marketers, where there is a regulated Class III
12 price and a regulated Class IV price, do not have an incentive
13 to put it into the highest and best use, because the pool value
14 to the marketer is exactly the same. The market created an
15 incentive to put it in the highest and best use, disaggregating
16 those two uses into two class prices, took away that incentive.
17 So we're, in this case, this discussion, I think it is pretty
18 obvious, if there is -- if there are markets where you get more
19 revenue, you put it there. If you got any left over, that's
20 residual to the revenue generating markets.

21 Q. Okay. So to distill all that down, what I hear you say
22 at the end is that, in fact, when Class III commands a higher
23 value than Class IV, Class IV is, in fact, the residual market?

24 A. No.

25 Q. No?

1 A. Not anymore.

2 Q. Okay.

3 A. It is the same market. Producers get the same price.
4 In this context, there's a residual market because the returns,
5 the actual prices were less to those who marketed to nonfat dry
6 milk and butter plants. And the reverse has happened,
7 sometimes nonfat dry milk and butter were higher in this
8 period. It's gone back and forth.

9 Q. You say that the producers receive the same price
10 because of the pooling function.

11 A. Currently under two classes.

12 Q. Yeah.

13 A. Producers receive the same price because of the pooling
14 function, and therefore -- and therefore, the residual market
15 characteristic that's described in the -- in the 1973 report
16 doesn't exist the same way. Now, there maybe --

17 JUDGE CLIFTON: Hold that thought. This is weighty
18 testimony and we'll do it after lunch. So you remember where
19 you are?

20 MR. VETNE: I do. I have it right here on my screen.

21 JUDGE CLIFTON: Okay. Keep it. I'm going to call you both
22 back. I need a break. All right. Everybody, please come back
23 ready to resume at about 2:20. 220.

24 (Whereupon, the lunch recess was taken.)

25 ---o0o---

1 TUESDAY, NOVEMBER 3, 2015 - - AFTERNOON SESSION

2 JUDGE CLIFTON: We're back on record at 2:20.

3 Ms. Vulin, how would you like to proceed?

4 MS. VULIN: Well, with the court's permission, we would
5 like to have Michael Anthony come to the stand, since we just
6 have him for a brief amount of time.

7 JUDGE CLIFTON: Yes, I approve of that. Mr. Anthony, if
8 you would come forward and be seated to my right.

9 MS. VULIN: And we currently have an exhibit that we're
10 distributing, a copy of which is in front of your Honor.

11 JUDGE CLIFTON: Thank you.

12 MS. VULIN: We would ask that that be marked as --

13 JUDGE CLIFTON: Yes, 129 it shall be.

14 (Thereafter, Exhibit Number 129, was
15 marked for identification.)

16 JUDGE CLIFTON: Please raise your hand if you need a copy
17 of Exhibit 129.

18 Mr. Anthony, I'll swear you in in a seated position.
19 Would you raise your right hand, please?

20 Do you solemnly swear or affirm under penalty of
21 perjury that the evidence you will present will be the truth?

22 MR. ANTHONY: Yes, I do.

23 JUDGE CLIFTON: Thank you. Please state and spell your
24 name.

25 MR. ANTHONY: Michael Anthony, M-I-C-H-A-E-L, last name

1 Anthony, A-N-T-H-O-N-Y.

2 DIRECT EXAMINATION

3 BY MS. VULIN:

4 Q. Thank you, Mr. Anthony.

5 Before we get into your written statement today, can
6 you just give us a little bit of your background and how you
7 got involved in the dairy industry?

8 A. Sure. I have been currently with Unified Grocers 11
9 years. I have spent the majority of my career in food and
10 beverage, mainly in the consumer package good segment. I came
11 to Unified 11 and a half years ago, after being with the
12 Kellogg's Company. All of it on the West Coast. I have been
13 Southern California-based for my entire career. And I came to
14 work at Unified, I actually used to sell to Unified Grocers
15 when they were known as Certified Grocers, so a prior vendor of
16 theirs. I was hired by an old boss of mine and that's how I
17 ended up at Unified.

18 Q. Thank you. So I'll ask now that you please read your
19 statement into the record?

20 A. Okay. Would you like me to read all the way through
21 and --

22 Q. Yes, please. And I'll stop you if there's any point
23 that I think we elucidate further with questions.

24 A. Okay. Great.

25 My name is Michael Anthony and I am the Executive

1 Director of Manufacturing Divisions for Unified Grocers. I
2 have been at Unified for 11 years in various Senior Leadership
3 roles, while maintaining responsibility within the Dairy
4 Division each of those years. I have current responsibility
5 for all plant operations and sales divisions within
6 manufacturing, and I report in to the EVP of Perishables/Fresh
7 Foods within the corporate structure. In addition, I serve on
8 three California boards, Dairy Institute, California Milk
9 Processors, and Dairy Council.

10 Unified Grocers is a member-owned cooperative of
11 independent grocery chains in stores throughout the Western
12 United States. The dairy processing plant is one of two
13 manufacturing facilities owned by the company, with the other
14 being a bakery plant. The dairy plant is the only one for the
15 company located in Southern California, with all other dairy
16 programs being partnerships with other dairies. We are a
17 unique business model for a dairy, in that Unified's
18 predominant business is grocery, frozen, deli, and perishables,
19 wholesale services to our members. And dairy is a subsidiary
20 type business available as a service convenience to our, to the
21 members. They are not obligated to purchase dairy from our
22 company -- from the company.

23 Our dairy is relatively small in size (acreage) and
24 scope (volume) and is focused predominantly on fluid milk and
25 drinks.

1 Q. How many people work at the dairy?

2 A. We're roughly 100 employees, and that includes both
3 workers in the plant operations and management.

4 Q. But that's not the whole company, correct?

5 A. No, Unified Grocers, being a cooperative, has a number
6 of divisions, grocery, frozen, deli, services, real estate, the
7 total, and again, you are talking union and non-union, drivers,
8 warehouse folks, about 3,000.

9 Q. Okay. But the dairy itself has only a hundred?

10 A. The dairy itself is only a hundred.

11 Q. Thank you. Please continue.

12 A. Okay. We are an intercity Los Angeles-based business
13 and employ a number of personnel from within the Southern
14 California neighborhoods we serve. Unified is mainly private
15 label based milk producer, and we rely on the growth and
16 success of our member accounts to keep our volume and business
17 going. They rely on the continual supply of milk in order to
18 fulfill the needs of their consumers, largely Hispanic-based,
19 with seven days a week of service.

20 We have a solid working relationship with our supplier
21 of raw milk and good supply under the current California State
22 Order with rare disruptions in service. This is important to
23 us, since we are located in Southern California and have
24 limited options to obtain other raw milk supply. Our concern,
25 being smaller-sized and geographically constrained, would be

1 maintaining that adequate supply of milk and doing so at the
2 competitively-priced model. We are in an extremely competitive
3 environment in Southern California, with consumption levels
4 declining each year and constant pressures from our retailers
5 to be lower priced. The impact of paying a high federal price
6 would equate to potential lost business for us in our
7 independent segment. Loss of volume will continue to drive our
8 fixed and variable costs up, which create an inability for us
9 to pay our members patronage dividends. Any additional
10 incentives needed to be paid out due to mandatory pooling or
11 additional transportation concerns, again, due to our
12 geography, would have to be passed onto our retail members who
13 are not very accepting to costs that don't impact them. This
14 would ultimately force the company to make an economic decision
15 about future of -- about the future of our dairy.

16 Our members have the ability to seek out other dairies
17 and buy their milk from them, if they choose. At Unified, we
18 have worked diligently over this past year to take a number of
19 costs out of the system, out of our system, in order to remain
20 competitive for our members. An additional layered cost into
21 our structure creates that competitive disadvantage that will
22 make it difficult for us to continue operations without getting
23 out of milk production entirely.

24 Q. Thank you, Mr. Anthony.

25 A. You're welcome.

1 Q. So you mentioned that you have a very tightly margined
2 product. So if you were to experience even a minor shift in
3 your cost structure, what would that do to your company?

4 A. Well, the concern we have is, when it comes to costs,
5 you know, we're obligated to pass on costs, we're obligated to
6 raise prices if need be. Our members, our member-customers are
7 not obligated to buy from us, and needless to say, they are not
8 too thrilled when we have to pass on those costs. So we have
9 tried to maintain by operational efficiencies, we have cut
10 costs where we need to. It's challenging. It's -- it's been a
11 tough year. We rely on the volume just to get the efficiency.
12 So any disruption, any loss of volume, it impacts our cost.

13 Q. And you said you are located in Southern California.

14 A. Correct.

15 Q. So the majority of your milk, if not all of it, comes
16 from the Southern California area?

17 A. The majority of our milk actually comes from the
18 Central Valley, Bakersfield and above.

19 Q. Okay. And if you were to have a disruption in the
20 volume of that milk, if you weren't getting the deliveries that
21 you needed, that would have a significant impact on your
22 business?

23 A. Oh, certainly. We are, as I mentioned in the
24 statement, we are a seven-day a week operation. We're
25 delivering seven days a week. Our members rely on it. It is

1 an extremely -- it's a labor-intensive program that we have.
2 We are, you know, probably our own internal transportation
3 costs probably run a little bit higher because we deliver seven
4 days a week to our retailers. Independent grocers typically
5 don't have large back rooms, there's not a lot of holding
6 power, so they are dependent upon their duty to get them milk
7 everyday.

8 Q. And currently do you have any issues getting served
9 with the fluid milk that you need?

10 A. We have not. We're, as I mentioned in the statement,
11 we have got, with the exception of, you know, maybe an act of
12 nature shutting down the Grapevine, which happened a few weeks
13 back because of flooding, that's very rare. But, you know, we
14 have been fortunate that our supply has been pretty strong.

15 Q. And your concerns are in testifying here today is that
16 if there is any change in your ability to acquire this milk or
17 in the price at which you can acquire it at, both of these
18 would provide significant challenges for your business?

19 A. Yeah, that's correct. Again, we're -- the model that
20 we're under being a cooperative with our members, we have a
21 certain obligation to return to them the best price, as well as
22 patronage dividend. Being co-op owned, we are owned by those
23 members, it's technically their dairy. They own the dairy so
24 anything that is made in the way of profits is returned right
25 back to the members, so therefore, when it comes to pricing,

1 they are looking at every little bit. If it goes up a penny,
2 that penny gets passed on. They have options, they can go
3 somewhere else.

4 Q. Is there anything else that you would like to add or
5 share in addition to your testimony here?

6 A. I think for, you know, for our type of business, it is
7 unique, and, you know, I mentioned our members because we're
8 member-owned within the co-op. They do have options. My
9 concern, and in a lot of this is just concern from the fact
10 that, you know, we have seen milk levels and milk consumption
11 decline over the years. We have seen some of the costs go up.
12 I mean, pay more for rent to park our transportation on, I pay
13 more for our water bills, I'm paying more for everything.
14 Again, our members are saying, okay, go control your costs
15 elsewhere. And the concern lies in, I don't want to lose
16 California milk to, say, an outside, outside of the state. And
17 our members have been known to bid out the business and look,
18 because they are trying to find bottom line best cost. So
19 those concerns lie, at least with our company, in making sure
20 the consumption stays where it's at and making sure costs stay
21 relative to be competitive to the market.

22 Q. All right. Well, thank you very much, Mr. Anthony. I
23 would like to move to admit Exhibit 129.

24 JUDGE CLIFTON: Does anyone want to ask questions of
25 Mr. Anthony before determining whether you object? No one. Is

1 there any objection to the admission into evidence of
2 Exhibit 129? There are none. Exhibit, 129 is admitted into
3 evidence.

4 (Thereafter, Exhibit Number 129, was
5 received into evidence.)

6 MS. VULIN: Thank you, your Honor, I have no questions at
7 this time.

8 JUDGE CLIFTON: I have two, Mr. Anthony. One refers to
9 your statement and you read it as saying that you can't afford
10 high price, and your statement as typed said higher price, and
11 I would like you to elaborate on that. Because when Ms. Vulin
12 asked you, you really indicated that any increase in cost would
13 be problematic.

14 MR. ANTHONY: Yes, and your Honor, I'm looking for it on
15 here. In which paragraph? I see it. Thank you. Yes.

16 So to answer your question, your Honor, when I look at
17 the landscape of Southern California and that market, and we're
18 not, you know, we're not alone in the dairy industry, certain
19 beverages and other food products are in the same landscape.
20 Any additional costs that go higher, we pass on or we end up
21 having -- having to take out of our system somewhere else. So
22 I have to work a little bit more diligently at cutting
23 overtime, or saving on waste water, or whatever it is, in order
24 to make up on any higher costs.

25 JUDGE CLIFTON: My other question relates to your mention

1 of the Grapevine. And for folks who don't know about it, would
2 you describe what you meant?

3 MR. ANTHONY: The, you know, we usually only worried during
4 the, our wintertime which is, usually, unfortunately not enough
5 rain and/or snow. Usually around February you start to worry
6 you may get a little ice on the road and have to shutdown for a
7 short time. We got some oddball storms that hit in wiped out
8 some roads a few weeks back and caused some huge delays. So
9 again, concern from our side, when Mother Nature hits, if there
10 is no contingency plan or an opportunity to get more milk, I
11 hit overtime at record highs on those days. So right? Because
12 the milk had to be diverted to the coast, came in, and so we
13 had staff on hand at our plant, ready to receive milk, ready to
14 produce milk, and had nothing to do. So we were delayed a
15 Friday, Saturday, for all of our shipment of milk.

16 JUDGE CLIFTON: So the only way it could reach you is to go
17 clear West to the coast and then come back to you?

18 MR. ANTHONY: And then come back to LA. So going up and
19 over the Grapevine, and I didn't describe it very well, sorry.
20 The Grapevine goes up to an altitude of, I don't know maybe
21 4,000, 3,000, and when it gets icy, they can shut it down,
22 there's no other alternative except to turn around and go back
23 and that causes delays not only for the supplier of the milk,
24 but for the processors who are waiting for their milk. And
25 then, in turn, the customer, our retailer members that I talked

1 so much about who lovingly would call us on the phone saying
2 "where is my milk?" So it does have a domino effect of not
3 being able to get that milk supply in proper order.

4 JUDGE CLIFTON: What highway number does the Grapevine
5 bear?

6 MR. ANTHONY: I think it is technically the 5. It's where,
7 let's see where, where 99 ends, and then comes into the 5, and
8 then goes up. The road that actually went out, I believe was
9 the 58 or something like that, there was a portion of the road,
10 and I am not positive on those numbers, but there was a portion
11 of the road that wiped out and had to be restored.

12 JUDGE CLIFTON: Thank you. Who else has questions for
13 Mr. Anthony? Mr. Beshore.

14 CROSS-EXAMINATION

15 BY MR. BESHORE:

16 Q. Marvin Beshore.

17 Good afternoon, Mr. Anthony.

18 A. Good afternoon.

19 Q. I'm the attorney for the dairy farmer cooperatives that
20 have requested this hearing and requesting a Federal Order.
21 I'm really glad to hear we have a good, you have a good
22 relationship with your raw milk supplier, we try hard anyway.
23 Just a couple of questions about, you know, your business here.
24 Can you describe the geographic area of the stores that your
25 members own that you supply with the milk products?

1 A. Yes. For the dairy specifically, the Southern
2 California dairy, we go up to the Central Coast,
3 San Luis Obispo, Paso Robles area, down far south as San Diego
4 to the border, and out to the Inland Empire, Palm Springs,
5 Coachella area. We do not ship up into Bakersfield and above.
6 So that's a general geography of where we will ship to.

7 Q. So in your stores, your member stores that you supply
8 with dairy products in that geographic area, who would be
9 competing with their own company to supply dairy products? In
10 other words, who are alternate suppliers that they might look
11 to if they were unhappy with their cooperative?

12 A. Yeah, any other dairy that had the ability to serve
13 their needs.

14 Q. Okay. And would those be primarily dairies in
15 Southern California?

16 A. Could be. Could be out-of-state. In the past we have
17 had some of our members bid out business to out-of-state
18 dairies just to test the waters and test the market to see what
19 price they could get. A lot of it depends on, you know,
20 economies of scale. If somebody is coming into distribute, you
21 know, do they have the opportunity to ship to our members. So,
22 yeah, I mean, you are really competing with any and all dairies
23 that have that ability to pack a retail-type operation and
24 package it together for them.

25 Q. Okay. Other than testing the waters out-of-state,

1 would it be fair that the primary options would be within
2 dairies that are within your geographic area and those of your
3 stores?

4 A. Certainly. Yeah. The primary.

5 Q. And so, just in case, you know, you are not familiar
6 with federal pricing or not that much because you are not
7 subject to it, I would assume?

8 A. Correct.

9 Q. Okay. So if the price changes, the price formula
10 changes under a Federal Order, it would change for all your
11 Southern California competitors in the same way? Do you
12 understand that or were you aware of that?

13 A. Yes.

14 Q. Okay. So in that respect at least, it wouldn't
15 competitively, you wouldn't be changed in any way?

16 A. Yes. Under the -- under our co-op structure, again,
17 I'm required to return back patronage dividends, so in any way,
18 shape, and form, I mean, we are earning for our members. And
19 so any movement in any type of costs, and I guess that was the
20 point that I was driving at, is that any kind of movement
21 impacts what that cents per gallon is that we return, and there
22 is an expected cents per gallon return.

23 Q. Right. And I guess I was thinking more of your concern
24 with the volume effect, that is, loss of volume would have an
25 effect on your margin?

1 A. Yes, and it is. I believe that's an impact also. When
2 I look at what's happened over the last couple of years, I have
3 seen retailers of ours that have doubled in size in the number
4 of their stores, and they have lost volume. That's a
5 consumption issue, that's a, you know, that's a pricing issue,
6 as price has driven -- our retailers are extremely price
7 sensitive. It's a -- they are not -- they are not -- they are
8 more low-ball price operators. And if you hit, I mean, I get
9 it, where the whole market could change and go up 50 cents, for
10 instance, that's going to drive our retailers into a new price
11 structure that's very difficult. So in one way, shape, and
12 form, I would probably lose volume, which is going to impact my
13 cost. And that's the concern area.

14 Q. Okay. Very good. When you look at patronage
15 dividends, and of course, farmer cooperatives are patronage
16 dividend structures also, is there any, is there a target range
17 that Unified Grocers has for returning patronage dividends,
18 X-percent of sales, or X-percent of patronage volume?

19 A. Yes, it is. I would have to do the math on what the
20 percentage is, but we do it in a cents per gallon. And so we
21 are, it is expected that we achieve a certain cents per gallon.
22 And if you don't, that's where we start to run into some
23 problems from being competitive, because you are not returning
24 the full amount that they expect.

25 Q. Okay. So your pricing model then, would be to, that

1 you need to be competitive in your into store price on a
2 current basis?

3 A. Correct.

4 Q. And in addition, with the expectation on the stores you
5 are serving, on your members that they would have the patronage
6 return at the end of the year?

7 A. Correct.

8 Q. Okay. Thank you very much.

9 A. You're welcome.

10 JUDGE CLIFTON: Who next has questions for Mr. Anthony.
11 Mr. Miltner?

12 CROSS-EXAMINATION

13 BY MR. MILTNER:

14 Q. Good afternoon, Mr. Anthony. My name is Ryan Miltner.
15 I'm counsel for Select Milk Producers.

16 A. Okay.

17 Q. It's perhaps more difficult than it appears to write
18 questions and listen to questions at the same time, so I'm
19 going to do my best not to repeat anything, okay?

20 A. Okay.

21 Q. How many actual members do you have?

22 A. I would say over a thousand. I do not know the exact
23 number. We run, we're Western United States, so we are up and
24 down the West Coast.

25 Q. And that includes your members in the Pacific

1 Northwest?

2 A. Pacific Northwest, Portland, Northern California
3 Southern California, out to Arizona, Texas, maybe a little in
4 Colorado.

5 Q. Okay. And you do, your company does sell products to
6 non-members as well, correct?

7 A. Correct. Yes.

8 Q. And that includes dairy products?

9 A. Yes.

10 Q. I was looking at some of the information on your
11 website, and I came across something that suggested that your
12 patronage dividends are paid as a result of the operations of
13 your milk plant in California and your milk plant in the
14 Pacific Northwest. Is that accurate?

15 A. Yes, that is accurate.

16 Q. Okay. Is there anything else that goes into your
17 patronage dividends, other than the proceeds from the operation
18 of those plants?

19 A. No. No.

20 Q. Okay. And it looks like you paid about \$9.5 million in
21 each of the last two fiscal years in patronage. Does that
22 sound correct to you?

23 A. That sounds correct.

24 Q. I got a few questions about your plant here in
25 California. How old is that plant?

1 A. Oh, gosh, that's a great question. Well, the plant or
2 how long have we owned it? The plant is --

3 Q. I'll take any information you are willing to share with
4 us.

5 A. Unified has had that at least 40 plus years. Beyond
6 that, I don't know how long the plant has been there. I think
7 it was a butter plant before.

8 Q. Okay.

9 A. I believe -- yeah.

10 Q. And in terms of the products that come out of that
11 plant, you produce milk in gallon jugs?

12 A. Milk in gallon jugs, milk in half, and milk in quarts.

13 Q. Are those all in plastic containers or do you --

14 A. Yes.

15 Q. -- do you do any gable top?

16 A. No gable, no gable top.

17 Q. Okay. Any products that would be considered Class 2
18 products in California?

19 A. No, we are predominantly probably 90 percent milk and
20 the rest is juice and drinks.

21 Q. If you are willing to share with us the volume of
22 products you produce, I would be interested in that.

23 A. I would be willing to give a range.

24 Q. I would be happy --

25 A. If that's acceptable.

1 Q. That's perfectly acceptable to me.

2 A. In terms of volume gallons, we roughly do 30 to 50
3 million gallons.

4 Q. Is that per month?

5 A. Per year.

6 Q. Per year, okay. So it is a smaller plant, relatively?

7 A. Correct.

8 Q. Compared to the rest of the industry in California?

9 A. That's correct.

10 Q. Okay. Thank you very much. I appreciate your answers.

11 A. You're welcome.

12 JUDGE CLIFTON: Who next has questions for Mr. Anthony?

13 Ms. Taylor?

14 CROSS-EXAMINATION

15 BY MS. TAYLOR:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. My name is Erin Taylor, I'm with USDA. And I first
19 want to thank you on behalf of the Department for coming to
20 this hearing and presenting testimony on behalf of your
21 company.

22 A. You're welcome.

23 Q. I should think most of my questions were answered by
24 Mr. Beshore's questions and Mr. Miltner. You eluded to a
25 co-op, having a cooperative supply, the cooperative being your

1 primary supplier, but I don't think that was specifically
2 stated on the record. Can you say whether your suppliers are
3 cooperative or independent shippers to your dairy?

4 A. You are talking about our supplier, not us as a
5 cooperative, I'm assuming.

6 Q. How do you get your raw milk supply, is it through a
7 co-op?

8 A. Yes. Yes, I just wanted to clarify because I had
9 testimony on us, of Unified being a cooperative.

10 Q. Right. And Mr. Miltner indicated from your website
11 there's a plant in the Pacific Northwest. Is that your bakery
12 plant?

13 A. No, no, the plant in the Pacific Northwest is a, and I
14 referenced in the statement, we have partner dairies, so
15 Unified does not have a physical plant, nor do we own a plant
16 anywhere but Southern California. We work with other dairies
17 throughout the Northern California and the Pacific Northwest,
18 where they have -- they have a basically a licensing to license
19 and produce our products under our name, and that's the
20 partnership program.

21 Q. Okay.

22 A. Yeah, so it is not a physical plant that we operate.

23 Q. Okay. The last paragraph in your statement, the second
24 sentence says, "An additional layered cost into our structure
25 creates that competitive disadvantage that will make it

1 difficult for us to continue operations without getting out of
2 milk production entirely."

3 There was some discussion with Mr. Beshore about, you
4 would still be on the same competitive stance as your fluid
5 competitors, but you would still have to pay your minimum
6 Class I price. Is this competitive disadvantage in
7 relationship to those competitors or into juice and other
8 beverage competitors?

9 A. It is predominantly milk. And it has a direct
10 reference to total costs within our operation and the ability
11 to maintain the volume that's needed in that plant to maximize
12 those costs and to spread the costs evenly in order to achieve
13 our patronage dividends. Without achieving our patronage
14 dividend, our retail members will not, they will not stay with
15 a milk program.

16 Q. Okay. I think that's it. Thank you so much.

17 A. You're welcome.

18 JUDGE CLIFTON: Does anyone else have further questions of
19 Mr. Anthony before I invite redirect? None. Ms. Vulin,
20 redirect?

21 REDIRECT EXAMINATION

22 BY MS. VULIN:

23 Q. Mr. Anthony, just a couple quick questions.

24 So if you had trouble acquiring milk for your plant,
25 would you have to pay premiums on that milk in order to acquire

1 it?

2 A. I would imagine that we would. And, you know, again, I
3 mention in the statement, that, you know, we have a good
4 relationship and we rely on that steady flow of milk.
5 Disruptions in any way, whether it is, you know, from Mother
6 Nature of a road going out or the ability to get it on a steady
7 supply or needing to go elsewhere, I would imagine it would
8 drive up some premiums.

9 Q. Yeah, and could your business handle having to pay
10 premiums for its milk supply?

11 A. It would be difficult and for all the reasons that I
12 just spoke of. I mean, those are the realities of the costs
13 that we're dealing with and what we're having to pay in running
14 our operation. I believe it would be difficult.

15 Q. Thank you. No further questions.

16 JUDGE CLIFTON: Mr. Anthony, I appreciate very much your
17 coming here. I can tell you are quite busy from seeing the
18 number of things you supervise. Is there anything else you
19 would like to add before you go?

20 MR. ANTHONY: No, I think I'm good, thank you.

21 JUDGE CLIFTON: All right. Thank you so much.

22 MR. ENGLISH: Your Honor, Chip English. And we did take
23 Mr. Anthony out of order, as we said we might. So at this
24 point it would be appropriate for Mr. Vetne to return, and I
25 think Mr. Miltner was questioning him, and whether they can

1 remember the exact spot they were in, that's up to them.

2 JUDGE CLIFTON: Welcome back to the witness stand,
3 Mr. Vetne. Mr. Vetne, would you again state your name?

4 MR. VETNE: John Vetne, V-E-T-N-E.

5 JUDGE CLIFTON: And Mr. Miltner, would you again state
6 yours?

7 MR. MILTNER: Ryan Miltner, M-I-L-T-N-E-R.

8 JUDGE CLIFTON: Thank you. Mr. Vetne, I cut you off
9 mid-sentence, can you return to what you were explaining?

10 MR. VETNE: When I left for lunch I thought I could, but
11 it's gone. We were on page 7.

12 CONTINUED CROSS-EXAMINATION

13 BY MR. MILTNER:

14 Q. We were on page 7.

15 A. Part 2 of the Milk Pricing Policy Report from 1973.

16 Q. We were. And with the help of the court reporter, I
17 took a moment to read through the last few things we said, and
18 you, as I now have been reminded, were discussing Class III and
19 IV prices and why things have changed since the Knutson Report,
20 and I believe you were articulating about how they are both
21 residual price formulas. And there was something also about
22 producers being indifferent to supplying either cheese plants
23 or butter powder plants.

24 A. Yes, we had been discussing the concept of residual
25 market for milk, as explained in the Dairy Policy Committee

1 Report. And at the time it was written, producers,
2 cooperatives, had choices under one class to market to cheese
3 or butter powder depending upon which commanded the highest
4 marketplace, so by default, the product combination that
5 commanded the lowest market price, and therefore, the lowest
6 milk returns, would be the residual. The highest and best use
7 of milk was achieved having one class for both manufacturing
8 uses.

9 I don't have the exact page references in the report,
10 but the Committee acknowledged that, as a matter of policy,
11 USDA could have two classes, manufacturing classes, to account
12 for those price differences, or one manufacturing class so that
13 highest and best use would be, in effect, economically forced
14 upon the supply community. My recollection is further that the
15 preference expressed in the report was for a single class. Of
16 course this did not materialize for reasons that Sue Taylor
17 described earlier.

18 Q. And on page 7, I think we --

19 A. Page 7 of my statement or of the report?

20 Q. I'm sorry, page 7 of Part 2 of the Knutson Report, I
21 had read a section that included the sentence, "butter and
22 powder was, therefore, the lowest revenue generating use." And
23 it continues, "it was, therefore, the true residual market for
24 milk. It can be argued that it is, therefore, the best
25 reflector of industry supply/demand conditions." And that's

1 the end of the quote.

2 A. Yes.

3 Q. So I think the question we got, we were approaching, or
4 partially addressed before lunch was, is it appropriate for us
5 to look to the current cheese formulas or cheese market as a
6 true residual market for milk?

7 A. Not the same way it is described here, because at least
8 the minimum price in pooled revenues for Class III and IV are
9 the same. The only, I think Sue went into this, too, the only
10 effective way for either Class III or Class IV to serve as a
11 residual market in this context, is if one class provides
12 revenues in the form of premium pricing that are not available
13 for milk going to the other class. The existence of a
14 marketplace premium would serve the same function as highest
15 and best use described in the Milk Pricing Advisory Committee
16 Report. So to that extent, I can't identify Class III or
17 Class IV as the residual market, because in our experience
18 since Federal Order Reform, there have been times when Class IV
19 has been highest, more frequently Class III has been highest,
20 but it goes both ways.

21 Premiums, however, the effect of premiums in drawing
22 milk to the highest and best use would be constrained if the
23 formula price set a milk price that really doesn't allow for a
24 margin and therefore, a premium difference between the product
25 value and the milk value.

1 Q. In many markets, isn't it true that Class III milk does
2 command a premium today?

3 A. Oh, absolutely. In Minnesota, Wisconsin, the Upper
4 Midwest, but that's been a discussion since day one, or
5 virtually since day one here.

6 Q. Sure.

7 A. You know, apparently the Class III price there, as at
8 any location to the East of that point, it is a national
9 Class III price, but there is a price surface and prices the
10 value rises as you go east, so there appears to be some higher
11 value in Minnesota and Wisconsin than -- than the surveyed
12 price fixed, I think a little bit west of Wisconsin.

13 Q. And in your years of watching the Federal Orders and
14 working with processors and others, is it, have you observed
15 that the, well, what have you observed about the levels of
16 those Class III premiums?

17 A. Where?

18 Q. The areas you just mentioned. Let's talk about the
19 Upper Midwest in particular?

20 A. Upper Midwest. The Upper Midwest, it's fact, long been
21 the fact that it's a very competitive market of manufacturing
22 capacity seeking milk supplies, and that creates high premiums,
23 if the premiums are available in the margin.

24 Q. It's, would you agree that it's one of the few areas in
25 the country where market power isn't so consolidated that both

1 buyers and the sellers realize competition for the sale and
2 purchase of milk?

3 A. You better state that question all over again, because
4 I think it had some assumptions in it --

5 Q. Well, that was the point.?

6 A. -- that I might not completely embrace.

7 Q. Okay. Let's break it down. First of all, would you
8 agree that not every area of the country has a sufficient
9 number of buyers or sellers of milk to constitute what an
10 Economist might consider a competitive free market or a
11 competitive marketplace?

12 A. I don't know where the Economists draw the line, but I
13 would agree there are many places in the country where there
14 are certainly fewer buyers bidding for the milk supply than in
15 the Upper Midwest, and my logical conclusion from that is, you
16 know, maybe the milk prices in those places aren't as high as
17 they might be if there were a number of bidders.

18 Q. You have done work both for clients, and I would
19 categorize it as academically or just out of individual
20 curiosity, about market power and consolidation, correct?

21 A. Yes.

22 Q. Would you categorize the Upper Midwest as an, as a
23 market where there is true competition for manufacturing milk
24 supplies?

25 A. There certainly is competition. I'm not sure I adopt

1 the word "true" because I don't want to infer there are places
2 where it's false. But definitely a lot of competition for milk
3 supplies among the manufacturers there, yes.

4 Q. Would you also agree that there are formulas in the
5 Federal Order system are meant to discover prices rather than
6 set them?

7 A. Who? We need some definitions here.

8 Q. Okay.

9 A. Going to the last phrase that you used, I think the
10 Federal Order Reform recommended in the Final Decisions, as
11 well as the 1995 Farm Bill, sought to encourage some free
12 market flexibility in premiums to adjust in the short-term to
13 changing conditions in the market. The Nourse Committee,
14 interestingly, took somewhat different view. The Nourse
15 Committee thought if there were substantial premiums in the
16 market, that was indicative of the either the regulated price
17 not being high enough or somebody achieving too much market
18 power to the disadvantage of others, and therefore, the
19 Secretary should consider terminating the Marketing Order
20 because it wasn't effective.

21 As we look at the Department's program brochure, the
22 Federal Milk Marketing Order program, last updated in 1989, and
23 the decisions that followed, more and more, the Department
24 recognizes the utility and efficiency of allowing room for
25 premiums to work in a market to address changes in supply and

1 demand, that setting of fixed price too high would not permit.
2 So that's the last part of your question. I can't remember the
3 first part anymore.

4 Q. Nor can I at this point.

5 A. Okay. Good.

6 JUDGE CLIFTON: If I could interrupt, Mr. Miltner, I just
7 want to be sure Mr. Vetne, when Mr. Miltner refers to the
8 Knutson Report, and you refer to the Milk Pricing Advisory
9 Committee Report, you, Mr. Vetne, are talking about them as if
10 they are the same report.

11 MR. VETNE: They are, in fact, the same report.
12 Ron Knutson was Chairman of the Committee that issued reports
13 in 1972 and '73, as Ed Nourse was Chairman of the Committee
14 that issued the report in 1962.

15 JUDGE CLIFTON: And I see that you encapsulate that on the
16 bottom of page 3 in your footnote 3, but just, again, for the
17 record, would you spell this Knutson.

18 MR. VETNE: K-N-U-T-S-O-N. And Knutson's name is actually
19 in the web URL by which the document may be accessed through
20 the University of Wisconsin.

21 JUDGE CLIFTON: Thank you. Mr. Miltner?

22 BY MR. MILTNER:

23 Q. And I guess since we're clearing up the record on that
24 point, those are the same reports you were referred to your
25 previous testimony, and I think we, you or me, or both of us

1 referred to them as the Knutson Report then.

2 A. I think we did. I think at the part, my prior
3 testimony focused on orderly marketing policy evolution. I
4 don't think I referred to Part 2 of the Knutson Report at the
5 time. Part 2 comes into particular play when you are talking
6 about policy for manufactured, milk used to produce
7 manufactured products, something other than the M-W.

8 Q. Okay. So let's back off the side path we have
9 travelled down for the past minute or two.

10 A. I'm glad to do that.

11 Q. Do you agree that the purpose of, particularly the
12 Class III and Class IV formulas in the Federal Orders, are
13 meant to discover the value of milk rather than set a value of
14 milk?

15 A. As you phrased the question, I'm not sure I can
16 distinguish those two concepts.

17 Q. Okay. Do you want to answer or should I clarify it?

18 A. And I'll tell you why I can't, then maybe you can ask.

19 Q. Okay.

20 A. Because the formula as it operates seeks to determine a
21 commodity value. And from that commodity value, determine or
22 set or fix a milk price that must be paid. And the difference
23 between the commodity value and the milk price is only the make
24 allowance, so I think the process both discovers and sets, but
25 it is not constrained anyplace where the commodity value is

1 actually higher than that discovered by the survey process.
2 So, for example, in New England, far to the East where there's
3 a large population, Class III value may be much higher, but the
4 minimum obligation is only essentially a Midwest Class III
5 blend price.

6 Q. Returning to the issue of premiums in the
7 Upper Midwest. Do you have any opinion or observation as to
8 whether the Class III price plus the realized premiums, exceed
9 the Class IV price on a consistent basis?

10 A. Almost always, that's my observation.

11 Q. Yeah. Okay.

12 A. If my recollection is accurate, that's my observation,
13 not just my opinion. That's what I have seen on paper.

14 Q. And since there is a certain level of competition in
15 the Upper Midwest market, would that not suggest that it is
16 Class IV which is the residual class, at least in that market?

17 A. No.

18 Q. No? Why do you reach that conclusion?

19 A. The producer gets the same pool price regardless.
20 Okay. But I admit, I do not know to the extent there is butter
21 and powder manufactured there, and there is a small amount of
22 NFDM, and quite a bit of butter. I don't know what those, if,
23 what those plants pay in the form of premium equals, exceeds,
24 or is less than what cheese companies pay in bidding for milk.
25 So if I knew that, I would be able to give a more informed

1 response, and maybe that's a good thing to look for.

2 Q. Doesn't the producer get the same price for a Class I
3 delivery then, as well, as for a Class III delivery or a
4 Class IV delivery?

5 A. Regulated price? Yeah, it's identical. It's
6 identical. There is some presumed benefit to adjustment by
7 location. It is ordinarily the case that a cheese or
8 manufacturing plant is close to the major milk production
9 areas, and that distributing plants tend to be closer to the
10 cities, so that producer gets a little bit more in the milk
11 price, but not enough more to cover the extra transportation
12 costs.

13 Q. Okay. So I'm having a little bit of an issue pulling
14 this all together in my head, so help me.

15 A. Okay. Ask me a leading question.

16 Q. I'll do my best.

17 A. Thank you.

18 Q. You say that we can't look to -- we can't look to the
19 Class III and IV prices to determine which is a reserve or a
20 residual price, because the producer receives the same either
21 way, correct?

22 A. That's correct. The producer receives the same
23 regardless. In almost every situation, the producer is
24 indifferent to whether his or her milk goes Class I, II, III,
25 or IV. So some mechanism must be available, there is, in fact

1 in the Upper Midwest, as there is in California, some
2 transportation allowances, and those go to handlers and the
3 handlers decide how they are passed through to producers. The
4 producers do get higher blend prices by location, but what
5 attracts milk to Class I markets is just as cheese markets,
6 manufacturing plants, as premiums. And for that purpose, the
7 suppliers in the Upper Midwest have organized to create CMPC
8 pricing, which is a premium mechanism, collected premium
9 mechanism outside of the order structure to get milk to Class I
10 plants. That, combined with performance requirements, which
11 mandates certain percentage of milk go to Class I, are the two,
12 the carrot and the stick that supply the Class I market, but it
13 is not the Class I price that provides the incentive.

14 Q. How would you like the Department to determine which is
15 the residual class for milk?

16 A. I don't think they need to.

17 Q. Why or why not?

18 A. I don't think they need to. Now that we have -- we
19 have price formulas, determine an appropriate, observe and find
20 an appropriate product price in the market you are looking at,
21 prices that are manufactured by processors in that market,
22 determine a reasonable make allowance allowing a reasonable
23 return on an investment, and milk will flow to those uses. If
24 you don't do that, milk will flow far away just to find a home.

25 Q. Is it possible that in a market with low Class I

1 utilization, in a competitive market for cheese or butter or
2 powder, that Class I is actually the residual class?

3 A. I can imagine that in the future. I don't see it now.
4 Remember that we're dealing in a market where cheese
5 consumption has grown, cheese value has grown. And in
6 California, 30 percent of the solids are exported so we have a
7 new demand market and that is exports.

8 Q. Okay. Thank you, sir.

9 A. Thank you.

10 JUDGE CLIFTON: Who next has questions for Mr. Vetne? I
11 would invite redirect.

12 MR. ENGLISH: I have none, your Honor. I thank my friend
13 and my colleague, Mr. Vetne, for his testimony.

14 MR. VETNE: Thank you.

15 JUDGE CLIFTON: Thank you. And I do as well, Mr. Vetne.

16 MR. VETNE: Thank you, your Honor.

17 JUDGE CLIFTON: You may step down. I would like a
18 ten-minute break before we begin Mr. Blaufuss' testimony; is
19 that all right? I know we just got back from lunch, but let's
20 be back and ready to go in ten minutes. That would be 3:30.

21 (Whereupon, a break was taken.)

22 JUDGE CLIFTON: We're back on record at 3:32. Mr. English?

23 MR. ENGLISH: Thank you, your Honor. I'm going to have you
24 mark a document in a moment, but before you do, and giving
25 people plenty of notice, which is to say a few minutes, I,

1 during this direct exam, I am going to reach back five weeks in
2 the hearing to a galaxy far, far away, and bring back
3 Exhibit 24, the Central Milk Producers Cooperative, CMPC, price
4 sheets. And I have a copy here. And Mr. Blaufuss and I will
5 be going through those as part of his direct at this time. So
6 I just thought I would let people know that, as we go forward.

7 Could we have it marked, your Honor, as the next
8 exhibit?

9 JUDGE CLIFTON: Ms. Frisius, will that be Exhibit 130?

10 MS. FRISIUS: Yes.

11 JUDGE CLIFTON: I am marking mine as Exhibit 130.

12 (Thereafter, Exhibit Number 130, was
13 marked for identification.)

14 JUDGE CLIFTON: And Mr. Blaufuss, you remain sworn. I
15 would like you again to state and spell your name.

16 MR. BLAUFUSS: Rob Blaufuss, B-L-A-U-F-U-S-S.

17 DIRECT EXAMINATION

18 BY MR. ENGLISH:

19 Q. All right. Please, Mr. Blaufuss, proceed with your
20 statement that is Exhibit 130, known as your testimony,
21 Part 3?

22 A. All right. As I stated in my earlier testimony, the
23 stated goals of the Agricultural Marketing Agreement Act are to
24 "Establish and maintain such orderly marketing conditions for
25 any agricultural commodity enumerated in Section 8c(2) (the

1 section which includes milk) as will provide, in the interests
2 of both producers and consumers, an orderly flow of the supply
3 thereof to market throughout its normal marketing season to
4 avoid unreasonable fluctuations in supplies and price." It is
5 these goals that have guided U.S. dairy policy since the
6 1930's. It is also why the Federal Order system has been
7 predicated upon Class I. While the U.S. dairy industry has
8 rapidly advanced in the decades that have followed, we continue
9 to rely on depression era realities to shape our milk price
10 regulations. In the past decade alone, the U.S. has gone from
11 an exporter of last resort, to one where we are exporting
12 approximately 15 percent of the total solids produced on an
13 annual basis. Given the current market realities, and
14 relationships amongst the different value streams of milk,
15 there begs a question, why should Class I milk continue to be
16 treated as a special class of milk compared to all other
17 classes of milk? What is the basis in maintaining Class I
18 differentials in the "higher of" provision? The Cooperatives
19 have provided absolutely no rationale as to why the current
20 Federal Order classified pricing architecture should be
21 maintained, especially as it relates to Class I.

22 The rationale for assigning Class I as the highest
23 value in the pool is largely tied to the historic belief around
24 the inelasticity of demand for fluid milk. Fluid milk has long
25 been thought of as a highly inelastic product. The problem,

1 however, is that studies conducted on the subject are decades
2 old and have not been updated to reflect current market
3 conditions. Fluid milk is no longer just competing against
4 fruit juices and soda, it is also competing against the wide
5 array of other beverages, a great many of which are made to
6 resemble many of the same nutritional characteristics of fluid
7 milk and used for the same purposes; such as for coffee or used
8 on cereal. I won't sit her today and tell you the price is the
9 only issue currently impacting the fluid milk industry, nor
10 will I tell you that fluid milk is significantly, is a
11 significantly elastic product. What I will say is that Dean
12 strongly refutes the long-held belief that some of the industry
13 still shares, that the price of fluid milk plays no role in
14 sales. While consumers may not notice when the Class I price
15 ranges from, say, \$12 to \$16 per hundredweight, they certainly
16 do when that price ranges from \$15 to \$30 per hundredweight.

17 In the October 26th, 2012 Cheese Market News, there was
18 an article that discussed a white paper titled, "A Long-Term
19 Turnaround for Fluid Milk, Dairy Industry Must Take a Trustee
20 Approach. The white paper quoted in the article was not
21 written by Dean Foods, nor was it written by the International
22 Dairy Foods Association. It was, in fact, a Dairy Management,
23 Inc., report, with the quotes in the article attributed to
24 DMI's CEO, Tom Gallagher. As stated by Mr. Gallagher, "The
25 problem is clear and the solution is even clearer. Fundamental

1 change in how we handle price and market the product is needed,
2 and it is needed now." The article later went on to say, "The
3 problem is that each time the cycle occurs, we see more and
4 more consumers leave the category, or buy less milk than they
5 did previously due to price pressures. But some consumers
6 don't resume purchasing when the price drops back down, so over
7 time, we essentially teach consumers that they can live without
8 milk." While the article may be three years old, its reality
9 still holds true today.

10 The data does not lie on fluid milk demand. Per capita
11 fluid milk consumption in the U.S. has declined from
12 approximately 29 gallons in 1975, to 19 gallons in 2013.
13 Maintaining a high Class I price through differentials and the
14 higher of, does nothing to help drive sales. In low
15 Class I utilization markets, such as California and the
16 Upper Midwest, the "higher of" provision is more about price
17 enhancement than it is about orderly marketing. Basing Class I
18 off of the Class III would occasionally result in price
19 inversions, and where Class II and Class IV could be higher
20 than Class I. Tighter pooling standards would help solve the
21 issue, but it also would require adequate shipping
22 requirements, an important provision not included in the
23 cooperative proposal. Most Class I handlers have milk supply
24 contracts that would keep fluid milk plants supplied during
25 times of inversion. Even if additional money was needed to

1 attract milk to Class I, it could be paid by Class I handlers
2 through increased over order premiums.

3 This FMMO promulgation hearing requires more than
4 simply rote recital based, at best, on 1996 data as to the
5 level of any Class I differential. Especially when the
6 cooperatives propose no performance standards, the basis for
7 any Class I differential in 2015, needs to be proved in the
8 level justified fully.

9 Q. And you have some end notes that you propose not
10 reading into the record, and we're not asking the court
11 reporter to type them in, correct?

12 A. Correct.

13 Q. So before I turn to the great joy of discussing central
14 milk producers cooperative price announcements, I have just
15 have one question on your testimony. You twice referred to the
16 concept of the "higher of" provision. And while almost all of
17 us in the room may know what that is, the record I don't think
18 does. So could you please describe what you mean by the
19 "higher of" provision?

20 A. Certainly. So in any given month, the Class I fluid
21 price set by either the higher of the Class III price or the
22 Class IV price. So in those months in which Class III is above
23 Class IV, Class III will set the Class I price. When Class IV
24 is higher than Class III, then Class IV will set the Class I
25 price.

1 Q. And to be clear, that is based upon the advanced price
2 announcements, correct?

3 A. Correct.

4 Q. Okay. So, your Honor, before I turn to Exhibit 24, I
5 would like to the move admission of Exhibit 130, just so I
6 don't forget.

7 JUDGE CLIFTON: Does anyone wish to question Mr. Blaufuss
8 about Exhibit 130 before determining whether you have any
9 objections? No one. Is there any objection to the admission
10 into evidence of Exhibit 130? There are none. Exhibit 130 is
11 admitted into evidence.

12 (Thereafter, Exhibit Number 130, was
13 received into evidence.)

14 BY MR. ENGLISH:

15 Q. So turning to Exhibit 24, which is the price
16 announcements from CMPC from January 1, 2012 through July 15th,
17 2015. I want to first ask, were you the original source of
18 what actually was turned in as Exhibit 24, five weeks ago?

19 A. No, I was not.

20 Q. Okay. But since then have you reviewed the price
21 sheets that are Exhibit 24?

22 A. Yeah, they definitely look to be accurate, or at least
23 for what I'm used to seeing.

24 Q. In fact, you receive these in your everyday business?

25 A. Correct.

1 Q. And Dean Foods pays for milk based upon these price
2 announcements for its operations in that area of the country?

3 A. Correct.

4 Q. Okay. So I asked, or tried to ask, a previous witness
5 some questions about how the price sheet worked, and I think to
6 is say at least it didn't go very well. So I would like to ask
7 you to turn to the May 1, 2015, effective May 1, 2015, price
8 sheet, which is the third to the last in this document. And
9 can you tell us how you, in your job as a Class I handler,
10 calculate or use this document to calculate what you are going
11 to be charged? And let's just to do it on a gross basis, if
12 that's possible. And as you go through it, let's clearly
13 indicate what number you are starting with and what number you
14 end up with. I guess also people might want to have the June
15 announcement out, because the purpose of this is to tie
16 together to the bottom left hand corner of the June
17 announcement, which lists May 2015 CMPC, minimum pricing
18 information.

19 A. All right. So looking at May, basically how we do it
20 is we kind of reverse engineer it. So we start with the end
21 result. So if we look at the May price sheet, the price for
22 Class I would be \$21.40 per hundredweight.

23 Q. And that's the number, the large number in the upper
24 middle section of the page listed for minimum class prices per
25 hundredweight, minimum class prices base zone -- I had it right

1 the first time, minimum class prices per hundredweight, right?

2 A. Correct.

3 Q. And that's \$21.40 right in the middle, correct?

4 A. That's correct.

5 Q. Middle upper, okay. So what happens next?

6 A. So what we'll do, so there's a processor assessment of

7 20 cents per hundredweight, we're going to subtract that 20

8 cents from the 21.40.

9 Q. And that's the milk pep assessment?

10 A. Correct.

11 Q. Okay. And so you are going to subtract 20 cents from

12 the 21.40.

13 A. And then we'll also subtract out the Federal Order 30

14 administration fee, which is that 3 cents.

15 Q. Okay. So you subtracted 23 cents so far.

16 A. Correct. And the next step we'll do, so since the base

17 price, the base zone in Chicago, we're going to take off the

18 \$1.80 differential off that number as well. So in the base

19 zone in that Order, it's going to be \$1.80 per hundredweight.

20 Q. Okay. And that gets you to what?

21 A. If my math's correct, it gets me to \$19.37 per

22 hundredweight.

23 Q. All right. So what do you do next?

24 A. We then compare that to what the announced Class I

25 price was, or the advanced Class I price, mover price. So for

1 the month of May, I have written down it was \$15.83 per
2 hundredweight.

3 Q. And that doesn't actually appear on the chart, but you
4 go get that from the Market Administrator's information?

5 A. Correct. Find that in a lot of different places.

6 Q. So that takes you to what?

7 A. So you subtract off the \$19.37 from the \$15.83 per
8 hundredweight, and that gets you to a gross premium for that
9 month of \$3.54 per hundredweight.

10 Q. Now, you just actually subtracted the larger number
11 from the smaller number, but it wouldn't matter, you are
12 looking at what the difference is between those two numbers,
13 correct?

14 A. Correct.

15 Q. So if you take the \$3.54, what do you do next?

16 A. So the \$3.54 hundredweight is the gross level. There
17 is also some credits that you can earn, should you --

18 Q. And those credits are where, under line 3?

19 A. Under line 3. So in this case, buyers can earn up to a
20 maximum of 20 cents per hundredweight for weekly uniform
21 receipts; 45 cents per hundredweight for monthly uniform
22 receipts; there's also a 5 cent at the end of the year if you
23 receive, I guess they will call uniform receipts over the
24 twelve months, but for purposes of this month you are not going
25 to include that. And then there's also if you, buyers can earn

1 a credit of 12 cents per hundredweight on milk purchased on the
2 basis of farm weights and tests, and producer butterfat tests.

3 Q. And we'll come back to what that all means but, if you
4 get all those credits, it takes you down to what?

5 A. My math has it at \$2.77 per hundredweight.

6 Q. And if you compare that to the June sheet showing the
7 May price, that actually is \$2.78?

8 A. Yeah, I suspect there's some kind of rounding somewhere
9 in the numbers that I'm not picking up, but I have looked at a
10 few different months and I have been a penny under in all but
11 one of them, and the other one I was spot on.

12 Q. Okay. Now, going back to the credits. Is that
13 something that everybody gets?

14 A. As I have been told by those in Dean who are directly
15 working with this on a day in, day out basis, it's not our
16 belief that these uniform receipts are a hundred percent
17 received. I don't believe we do, and I don't believe a lot of
18 Class I handlers in the area do, but we will certainly earn at
19 least a portion of those credits.

20 Q. Okay. So the bottom line is that when you also have in
21 your possession the Market Administrator's announcement for the
22 advanced Class Price, Class I price, you can, taking the
23 original number of \$21.40, subtracting the processor assessment
24 of 20 cents, subtracting the 3 cents for the Market
25 Administrator, subtracting the Class I --

1 A. Base differential.

2 Q. -- base differential of \$1.80, then subtracting the --

3 A. The actual Class I mover price.

4 Q. -- the mover price and the credits, you can get to the
5 number that's shown in the left hand column within a penny,
6 correct?

7 A. Correct.

8 Q. All right. And again, this is something that you are
9 responsible for and you review these sheets regularly,
10 correct?

11 A. Correct. I monitor them from time to time when
12 different projects come up.

13 Q. Your Honor, at this time I move admission of
14 Exhibit 24. The point of this was that it wasn't admitted
15 earlier.

16 JUDGE CLIFTON: Does anyone wish to question this witness
17 before you determine whether you have any objection? No one.
18 Are there any objections to the admission into evidence of
19 Exhibit 24? There are none. Exhibit 24 is admitted into
20 evidence.

21 (Thereafter, Exhibit Number 24, was
22 received into evidence.)

23 MR. ENGLISH: And, your Honor, the witness is now available
24 for further examination.

25 JUDGE CLIFTON: Who will begin with questions of

1 Mr. Blaufuss? Mr. Beshore? Thank you.

2 MR. BESHORE: I think my hand or my name comes up by
3 default, one or the other.

4 JUDGE CLIFTON: You know, I really appreciate it. It is
5 not easy to be the first to cross-examine. You have just
6 gotten the testimony, and I appreciate very much your being
7 willing.

8 CROSS-EXAMINATION

9 BY MR. BESHORE:

10 Q. Thank you. Marvin Beshore.

11 Good afternoon, Mr. Blaufuss.

12 A. Good afternoon.

13 Q. Let's look at Exhibit 24 real quick first. And stay
14 with the May 1 announcement which you went through with -- the
15 May 1 announcement which you went through with, in part, with
16 Mr. English.

17 Would you look at notes, I don't know, notes (7) (8)
18 in the middle of the page where there are, you know, additional
19 details with respect to the applicable prices. And just for
20 the hearing record, and so we can have the context for the
21 discussion, read number 7.

22 A. Number 7: "Effective February 1, 2008, milk from any
23 source for which CMPC is the authorized marketing agent, shall
24 be eligible to receive a 90 cent per hundredweight credit for
25 all non-affidavit Class I milk ordered and received."

1 Q. Okay. And let's go ahead and read number 8, also.

2 A. Number 8: "Effective March 1, 2012, affidavit milk
3 from any source for which CMPC is the authorized marketing
4 agent, shall be charged 75 cents per hundredweight on all plant
5 production or plant bulk sales of Class II, III, or IV milk
6 that is either labeled or marketed as affidavit milk."

7 Q. Okay. So both (7) and (8) refer to affidavit milk or
8 non-affidavit milk, and can you tell us what that is? Do you
9 know what that refers to?

10 A. I believe that refers to rBST or rBST free milk.

11 Q. And affidavit is, referring to that milk as affidavit,
12 can you explain that, do you know why it is described that
13 way?

14 A. I don't. I mean, I know generally that affidavit or
15 non-affidavit means rBST free.

16 Q. And just to get the, you know, the colloquial in
17 essence, or the industry term, if it is affidavit milk it would
18 be your understanding that that is milk that is for which the
19 buyer is assured comes from cows not treated with rBST?

20 A. I believe that to be true, yes.

21 Q. Okay. So non-affidavit milk would be then, milk from
22 farms where the farmer, the dairy farmer, has not certified
23 that he has not used rBST?

24 A. I think that's true. I think we backed into the right.

25 Q. I think we did also, and it -- it's kind of like, you

1 know, it costs you 90 cents, or you get a credit, on number 7
2 you get a credit of 90 cents per hundredweight if you buy
3 non-affidavit milk, right?

4 A. I believe that's what the sheet says.

5 Q. Okay. Does Dean Foods ever buy non-affidavit milk?

6 A. I don't know.

7 Q. Okay. Sometimes referred to as conventional, it's not
8 on this milk sheet, but I guess is that also used, conventional
9 milk meaning being from sources that are, you don't know
10 whether rBST has been used or not, but it's not certified to be
11 rBST free?

12 A. I don't know if our entire system is rBST free. I
13 would hate to sit up here and tell you something that's not
14 true. I believe the vast majority, I don't know if we entirely
15 have no BST in the system.

16 Q. Okay. In any event, and my point is not to determine
17 whether you ever buy one or other, but in terms of this price
18 sheet, when you got to the point of \$2.77, that was assuming
19 that it is affidavit milk, correct?

20 A. Would you ask that question again, please?

21 Q. Okay. Let me get at it another way. The numbers, the
22 parenthetical numbers in the middle here, generally are
23 conditions or qualifications with respect to the the price, the
24 announced \$21.40 price, correct?

25 A. Correct.

1 Q. And the uniform, the receiving credits which you
2 described in response to Mr. English, are showing number 3
3 there, correct?

4 A. Correct.

5 Q. And they are described as credits, meaning that they
6 would come off of the top line price that you started with
7 when you described, the number from which you backed down, I
8 guess, correct?

9 A. Correct. And they are included when it says the
10 minimum class prices based zone, they tied parenthetical 3
11 which shows the credits.

12 Q. Okay. So you showed how a number -- a number of items
13 come off of that in your analysis, and you get down to a
14 premium of \$2.77. And so my question is, the 7, if you were
15 going to get, if you were going to order non-affidavit milk,
16 you would get an additional 90 cent credit or a credit off that
17 \$2.77, would you not?

18 A. I believe that to be true just from reading number 7
19 here.

20 Q. Okay. And then number 8 I think is meant to indicate
21 that if the plant resells milk that it has purchased from CMPC
22 sources and labels it or markets it as affidavit milk, you
23 will, there will be a charge for that; is that your
24 understanding?

25 A. I believe that to be true.

1 Q. Okay. Okay. So the 90 cents, the \$2.77, then, would
2 include 90 cents for rBST, for the rBST free affidavit. So
3 that if you, if a plant buying from CMPC sources were
4 purchasing just straight conventional milk, the price would be
5 90 cents per hundredweight, less than \$2.77 or \$1.87?

6 A. From reading bullet 7, I would believe that to be true.

7 Q. Very good.

8 JUDGE CLIFTON: And just for the record, would you tell us,
9 Mr. Blaufuss, how rBST looks? Where the capital letters are?

10 MR. BLAUFUSS: I believe lower case rBST.

11 JUDGE CLIFTON: Thank you. And I know there's more than
12 one way to do it, is it possible that the only capital letter
13 is the B?

14 MR. BLAUFUSS: I think I have only seen it where the R is
15 the lower case, everything else is capitalized.

16 JUDGE CLIFTON: Okay. I need help with this. I always
17 forget how it is, because it's odd. Mr. English, would you
18 help me here with this?

19 MR. BESHORE: I think your witness is correct.

20 MR. ENGLISH: I think he's correct. And having litigated
21 to the 6th Circuit, it is rBST, and I don't propose to say what
22 it is, because I don't want to spell it this afternoon.

23 JUDGE CLIFTON: So all the letters are capital but the r?
24 Okay. Well, I have seen it more than one way, but we'll use
25 that for this, unless somebody else wants to give me an

1 alternative. Okay. We'll go with this, for now. In any
2 event, everyone will know what it means, because it starts with
3 a small letter, everything else is capital. All right.

4 And just for the record, when you are talking, both of
5 you mentioned the term 277 you were talking about \$2.77? Is
6 that correct?

7 MR. BESHORE: yes.

8 MR. BLAUFUSS: Yes.

9 JUDGE CLIFTON: Very good. Mr. Beshore.

10 BY MR. BESHORE:

11 Q. Thank you. Now, in addition to these various
12 enumerated prices and credits on, that we have discussed on
13 Exhibit 24, the May 2015 announcement, if you look further to
14 the bottom, Area 2, and under the subheading Area 2 and Area 3,
15 are there additional credits that a buyer may be entitled to
16 off the premiums that has been, that we have detailed thus far?

17 A. Yes. So if you look at Area 2 and Area 3, they do
18 mention credits issued on Class II sales that go into different
19 areas.

20 Q. Okay.

21 A. Outside of just the general area.

22 Q. Okay. Are there -- are there also credits right above
23 Area 2, competitive credits on Class I sales in certain areas?

24 A. Yes, that's what it states.

25 Q. Okay. So the purchaser, the Class I dairy purchasing

1 from CMPC or pursuant to the CMPC price announcement from CMPC
2 authorized sources, their aggregate net price for the month
3 over order, over the minimum regulated order, would be the
4 product of all these various charges and credits that are
5 reflected in the price announcement.

6 A. Correct. So how I tend to think about it is, the
7 number I walk through is kind of the general base, but if you
8 are going to sell into certain regions, you are going to have,
9 as it states here, some credits.

10 Q. Right. If you were to buy conventional non-RBST free
11 milk, you would have that 90 cent credit on all your Class I?

12 A. That's what it states on this document.

13 Q. Okay. So let's, I think I'm done with Exhibit 24.
14 Let's go to your testimony here on Blaufuss, Part 3, which the
15 number for which I didn't note.

16 JUDGE CLIFTON: Oh, yes, 130.

17 MR. BESHORE: Thank you.

18 JUDGE CLIFTON: You're welcome.

19 BY MR. BESHORE:

20 Q. In the first full paragraph, the first sentence, you
21 quote at length from the Agricultural Marketing Agreement Act.
22 I don't want to read that quote, but the second sentence after
23 that you state, "it is also why the Federal Order system has
24 been predicated upon Class I." It, referencing the long quoted
25 part of the statute, I take it; is that correct?

1 A. Correct. In my general belief, and I think the belief
2 of the quote that I have from Mr. Hatamiya, that the
3 Federal Orders are, their goal is to ensure an adequate supply
4 of fluid milk to fluid processors.

5 Q. So, you are, it refers to that quote. I want you to
6 tell me what words in that quote you are referring to when you
7 say, "it is why the Federal Order system has been predicated
8 upon Class I."

9 A. It is my belief, so if you look at the line "as will
10 provide in the interest of producers and consumers an orderly
11 flow of supply," I believe that line to be a supply of milk to
12 fluid processors.

13 Q. Okay. And which words there tell you that it is an,
14 only relates to a supply to fluid processors? Which words?

15 A. In that line, there is nothing that specifically calls
16 it out. It is my general belief, and I think the belief of
17 others, maybe perhaps not Proponents of Proposal 1, that the
18 goal of the Federal Order system is for ensuring an adequate
19 supply to fluid milk processors.

20 Q. Okay. Are there any other words other than that clause
21 there, that you believe that belief is, that you understand
22 that belief to be premised upon?

23 A. Not in that quote.

24 Q. Okay. Now, with respect to "higher of" pricing. Are
25 you -- price inversions are not a very orderly circumstance in

1 the system, would you agree?

2 A. I think we have, in a lot of cases, for fluid plants
3 milk supply agreements with suppliers, and I generally think
4 that absent a "higher of" provision, I think there's a
5 mechanism in terms of an unregulated price that would make both
6 parties or make the suppliers whole.

7 Q. Okay. So I understand that you feel you could hold
8 your suppliers to delivering Class I, even if Class I is lower
9 than Class II or Class III or Class IV, correct?

10 A. I think you have to pay a competitive price in the
11 market to get milk into your plants. Whether or not that is a
12 regulated price or an unregulated price, it is kind of where
13 you sit in the chain of where you think those dollars should be
14 generated.

15 Q. Okay. And you are satisfied to work either way?

16 A. I don't know what you mean by that question.

17 Q. Well, to either get your milk through the higher
18 regulated price or through the marketplace price of over order
19 prices?

20 A. I think we have to pay a competitive price to get milk
21 into our plants.

22 Q. Okay. So let me get back to the question that I posed
23 to start this. Isn't it, aren't price inversions, in essence,
24 a disorderly condition in a classified price system in the
25 Federal Order system?

1 A. You know, I know this issue came up during Federal
2 Order Reform, and that was one of the rationales given.
3 Whether or not they said it would cause disorder in the market,
4 I don't know.

5 Q. Okay. But that was one of the rationales for the
6 higher, so-called "higher of" use for the base for Class I
7 prices?

8 A. I believe at that time when they were putting that in
9 place, that was one of the rationale.

10 Q. Okay.

11 A. Whether or not they stated it was because of disorderly
12 conditions, I don't know, but there were multiple plants put
13 forward to price Class I milk, and that's the one the
14 Department ultimately went with.

15 Q. Set aside whether we attach to it the weighted term
16 disorderly, it was one of the conditions that was, upon which
17 the "higher of" was based in the Reform Decision, correct?

18 A. It was one of the concerns of the Department.

19 Q. Right. And so if you go away from that, it would be
20 even more of a concern, correct? That is, it's likely that
21 there will be more price inversions if there's not a higher of
22 basis for Class I prices, isn't that just a fact?

23 A. I'm not sure that I can accurately predict the future
24 and say Class III is going drive it all the time, Class IV is
25 going to drive it all the time. The market factor is going to

1 dictate whether or not there will be inversions. If there's
2 Class III becomes the driver and cheese prices stay high
3 relative to powder, I can't say one way or the other that you
4 are going to have compared to the last three years, will have
5 more inversions.

6 Q. Okay. So are you advocating going off the higher of?

7 A. In this concept, what I'm talking about in this is
8 basically, look, in Proponents of Proposal 1 have basically
9 stated that they are just going to go along with what's in the
10 books, and what USDA has set, or what the Federal Order Reform
11 set, is how we price milk in the U.S.

12 Q. You mean, adopt the existing national grid?

13 A. Correct. And what I'm asking here, we look at the way
14 Class I fluid sales have declined, the extreme volatility in
15 the industry, and just the general sense that the higher of
16 provision completely, for the most part, severely limits our
17 ability to hedge Class I milk. So we look at all other classes
18 of milk, be it II, III or IV. You know, there's adequate and
19 fairly strong ways of hedging those input prices. For Class I,
20 from an internal perspective, the basis risk between what that
21 higher of provision severely limits our ability to hedge the
22 Class I volume effectively.

23 Q. Well, you have the same ability to hedge Class III and
24 IV as the California dairy farmers do to hedge III and IV,
25 don't you?

1 A. Well, we're not really hedging Class III or Class IV,
2 we're predominantly a Class I processor.

3 Q. But that's your basis risk. If you are talking about
4 hedging Class I, the basis risk is whether it is going to be
5 Class III or Class IV, correct?

6 A. I haven't looked at the basis between California
7 hedging on III and IV basis, because that's not something we
8 look at as a Class I processor.

9 Q. But haven't you been here for this hearing?

10 A. I have.

11 Q. Haven't you heard the witnesses from your group say
12 that California producers ought to be able to blend their
13 futures instruments between III and IV and have a nice hedge
14 for their milk price?

15 A. I know there was a discussion, but I don't know that I
16 can recite it verbatim.

17 Q. Okay.

18 A. It is all in the hearing record, so --

19 Q. Are you -- but are you advocating an abandonment of the
20 higher of for Class I?

21 A. I think since we're in a promulgation hearing, I think
22 the Proponents of Proposal 1, it is their job, and propose why
23 the rationale for maintaining it the way it is today. I want
24 the discussion of is there a better way to price Class I milk?
25 It is differentials, is it the higher of, is that what attracts

1 milk to Class I, or is it the premiums? You know, we haven't
2 had a discussion. We basically just say, yep, what was decided
3 in Federal Order Reform still fits today. And my point of
4 this, I think there should be a discussion, we're promulgating
5 a Federal Order, and I think there should be a discussion on
6 what is the right way to price milk.

7 Q. And what's your recommendation with respect to whether
8 the higher of should be used for Class I?

9 A. I don't know that I have approval to get into what
10 Dean's Federal Order Reform.

11 Q. I thought that's why you were here to testify.

12 A. Well, is this a Federal Order Reform hearing, or, I
13 mean.

14 Q. It is a Federal Order hearing. Okay. So you don't
15 have a position to testify to with respect to that?

16 A. Not today, no.

17 Q. Thank you. That's all I have.

18 JUDGE CLIFTON: Who next has questions for Mr. Blaufuss?
19 Ms. Taylor?

20 CROSS-EXAMINATION

21 BY MS. TAYLOR:

22 Q. Erin Taylor with USDA.

23 Good afternoon, Mr. Blaufuss.

24 A. Good afternoon.

25 Q. A few just questions that relate to the conversation

1 you just had with Mr. Beshore.

2 So you are here not necessarily testifying on the
3 position of the Dairy Institute, but solely on Dean Foods. And
4 Dean Foods doesn't have a position, necessarily right now, on
5 what should be the alternative to the higher of?

6 A. I think we're a part of a coalition, and at the end of
7 the day we came together as a group with a proposal that works
8 for all. And you know, there's enough in the proposal that
9 made us comfortable with being able to attract, ensure and
10 attract an adequate supply to Class I.

11 If I'm just putting my Dean Foods hat on, what I have
12 talked to on the Federal Order pricing, you know, that
13 certainly would have been more of a discussion piece.

14 Q. And the coalition and the Dairy Institute's position in
15 their Proposal 2 is still going forward with the higher of to
16 price Class I milk?

17 A. That's what's in our proposal.

18 Q. Okay. Your statement talks about the Class I
19 differential and the national price grid and how you don't
20 think that the cooperatives have supported the, provided an
21 adequate support for why we should just adopt the differentials
22 for California; is that correct?

23 A. I think that's correct. I mean, we're basing, I
24 believe as Mr. Schad's testimony that talked about the
25 timeframe of when this data came about, and we're talking data

1 from the mid to late '90's. I think if we're going to talk
2 about updating the price surface, I would like data to be less
3 than, call it 15 to 16 years old.

4 Q. The differentials in Proposal 2, are they still the
5 same, though, as what's in Proposal 1?

6 A. I believe so.

7 Q. So your, the Institute's position now would be that for
8 now you are supporting the current differentials and you would
9 elude to in the future perhaps some change to what they maybe
10 should be?

11 MR. ENGLISH: Your Honor, if I may, Chip English. You
12 know, obviously we had to put a proposal together. I think as
13 I indicated in my opening statement, you know, we think that
14 things have to be proved.

15 MR. BESHORE: That's not an objection, your Honor,

16 MR. ENGLISH: This is an explanation of counsel for the
17 position of the Dairy Institute of California, which I think is
18 entirely appropriate, given the fact that the question goes to
19 that. So I ask for permission to be able to give a statement
20 of what the Dairy Institute of California's position is.

21 JUDGE CLIFTON: I will allow you to do that after the
22 examination of this witness is complete.

23 MR. ENGLISH: All right.

24 BY MS. TAYLOR:

25 Q. And I'll explain why I'm questioning what I'm

1 questioning. I'm just trying, for the record, to be clear
2 about -- you know, you are up here and presenting testimony on
3 why you don't think necessarily the differentials have been
4 supported, and why maybe the higher of is not the way to go.
5 As I read it, you think maybe Class I should be priced off of
6 Class III, and if there's a price inversion in that given
7 month, then premiums will take over and get that milk to
8 Class I if necessary; is that correct?

9 A. I would generally agree with that. If I understand
10 your question, yes.

11 Q. I probably talked too fast, my mom tells me not to do
12 that. So I'm just trying to, just generally for the record, so
13 when we go back, when we come back and have to read through the
14 testimony back in DC, and remember what we heard five months
15 ago, and summarize just generally what you are up here
16 testifying to, that's it. I'm not trying to get any kind of
17 "gotcha" questions, it's just generally that, is what I'm
18 looking for. So I don't know if that's clears it up for
19 Mr. English anymore.

20 I really don't have any other, any other questions.

21 JUDGE CLIFTON: Mr. Blaufuss, are you asking that everyone
22 begin to reconsider some of these basic presumptions for some
23 future national rule making hearing? Is that part of why
24 you're not limiting this document to the Proposal Number 2?

25 MR. BLAUFUSS: No, I don't think I'm trying to foreshadow a

1 national hearing on this. My point is, Mr. English had stated
2 in his opening statement, I believe, all those weeks ago now,
3 you know, nothing can be assumed and nothing is to be given. I
4 think you have to defend the position, defend why maintaining
5 the status quo as it relates to pricing is how we should go.
6 And that's what, my point of this testimony was trying to get
7 at.

8 JUDGE CLIFTON: All right. Do you have some uncertainty as
9 to whether Proposal Number 2 is identical to Proposal Number 1
10 with regard to differentials?

11 MR. BLAUFUSS: I believe they are the same, but I don't
12 have the proposals sitting in front of me. I believe they
13 maintain the same Class I differentials.

14 JUDGE CLIFTON: All right.

15 MR. BLAUFUSS: Proposal 2 versus Proposal 1.

16 JUDGE CLIFTON: All right. Who next has questions for
17 Mr. Blaufuss? Mr. Beshore?

18 CROSS-EXAMINATION

19 BY MR. BESHORE:

20 Q. Marvin Beshore. I apologize, just one question on the
21 CMPC Exhibit 24 that I didn't get to. And it just relates to
22 the scope of the proposal or of the document, the price
23 announcement. The Class I prices there, of course, only apply
24 to Class I, which is roughly ten percent or so in the Order 30,
25 correct?

1 A. The premium that I went through is Class I only.

2 Q. Right.

3 A. The premiums tied with the mover.

4 Q. Right. So it only, if it were to apply to all the milk
5 in the market, it would only apply to roughly ten percent or
6 whatever the Class I utilization is that month, correct?

7 A. I would assume it to be that premium to attach to
8 whatever the Class I volume is, that the CMPC handles.

9 Q. And, in fact, CMPC only represents basically the old
10 Order 30 side of the current Order 30, which is much larger
11 than, which is a merger or a combination of multiple Orders
12 resulting from Federal Order Reform, correct?

13 A. I'll be honest, I don't know. I don't know how much of
14 an area it encompasses.

15 Q. Okay. So -- okay. So you don't know what portion of
16 the Federal Order 30 the CMPC Price Announcement relates to?

17 A. I don't.

18 Q. Okay. Very good. Thank you.

19 JUDGE CLIFTON: Another complication. Ms. Taylor.

20 Ms. May.

21 CROSS-EXAMINATION

22 BY MS. MAY:

23 Q. Actually, it's Ms. May. I have a question about your
24 statement on, toward the bottom of the second page. In your
25 last paragraph there it says "maintaining a high Class I price

1 through differentials and the "higher of" does nothing to help
2 drive sales." My question is, do you believe that it is the
3 role of the federal Marketing Orders to help drive sales
4 somehow?

5 A. No. I think my point with that is, if you are always
6 setting Class I as the highest value, which is in a given month
7 is typically the case, so if you have the higher of and the
8 Class I differentials, you are setting a high Class I price
9 relative to the other classes of milk, and I'm of the belief
10 that milk is not a highly inelastic product. I still think it
11 is inelastic, but not highly. I think if you have the highest
12 price in the market, and the way that we have had the
13 volatility in say the last two or three years, I think that's
14 impacted sales.

15 Q. Okay. So would you have a suggestion for an
16 alternative?

17 A. I don't know that I'm here to testify to the
18 alternative. We certainly have some company opinions, but I
19 don't, I'm not at liberty to discuss internal discussions at
20 this point.

21 Q. Which is probably appropriate, I was just curious.
22 Thank you.

23 JUDGE CLIFTON: Who else has questions for Mr. Blaufuss
24 before I invite redirect? No one. Mr. English? Redirect?

25 /////

1 REDIRECT EXAMINATION

2 BY MR. ENGLISH:

3 Q. Let me see if I can do this through asking
4 Mr. Blaufuss.

5 So the Dairy Institute put in a complete proposal for
6 all provisions, correct?

7 A. Correct.

8 Q. Okay. But just because we put in a section, does not
9 mean that we have decided to put in testimony to support that
10 section, correct?

11 A. Correct.

12 Q. Okay. That's it.

13 JUDGE CLIFTON: Ms. Taylor?

14 MS. TAYLOR: Erin Taylor. So just so we're clear going
15 forward, then, there's not going to be a witness from the
16 Institute to talk about the Class I differentials that you all
17 have proposed?

18 MR. ENGLISH: There will be not a witness from the Dairy
19 Institute of California to support Class I differentials.

20 MS. TAYLOR: Okay.

21 JUDGE CLIFTON: Are there any other questions for
22 Mr. Blaufuss?

23 MR. ENGLISH: I have something for you, your Honor.

24 JUDGE CLIFTON: All right.

25 MR. ENGLISH: Since you expressed an interest, but I wanted

1 make sure that I didn't misspell it. Recombinant bovine
2 somatotropin, rBST. R-E-C-O-M-B-I-N-A-N-T. Next word Bovine,
3 B-O-V-I-N-E. Last word is somatotropin,
4 S-O-M-A-T-O-T-R-O-P-I-N.

5 Bovine Somatotropin, or BST, occurs naturally in cows.
6 The recombinant or synthetic version is what is treated, and
7 that's why it is lower case "r" and in capital BST.

8 JUDGE CLIFTON: Okay. But somatotropin is all one word,
9 right?

10 MR. ENGLISH: Yes, it is.

11 JUDGE CLIFTON: But it has a capital S and a capital T?

12 MR. ENGLISH: Yes, ma'am. I didn't do it.

13 JUDGE CLIFTON: All right. So I'll pay more attention to
14 labels next time I'm in the store.

15 MR. ENGLISH: And if we're done with Mr. Blaufuss, I do
16 have one more witness.

17 JUDGE CLIFTON: Oh, now this is good news. We're making
18 more progress than I had thought.

19 Thank you, Mr. Blaufuss, you may step down.

20 MR. ENGLISH: I am bringing back Mr. Zolin for Part 5.

21 JUDGE CLIFTON: This is the testimony of Mr. Alan Zolin.
22 Ms. Frisius, I'm assuming that the testimony would be
23 Exhibit 131.

24 MS. FRISIUS: That's correct.

25 JUDGE CLIFTON: And that the exhibits to the testimony

1 would be Exhibit 132.

2 (Thereafter, Exhibit Numbers 131 and 132,
3 were marked for identification.)

4 JUDGE CLIFTON: Mr. Zolin, you remain sworn. Would you
5 again state and spell your name?

6 MR. ZOLIN: Alan Zolin, A-L-A-N, Z-O-L-I-N.

7 JUDGE CLIFTON: Thank you. Mr. English, you may proceed.

8 DIRECT EXAMINATION

9 BY MR. ENGLISH:

10 Q. Thank you, your Honor.

11 Mr. Zolin, would you read your Exhibit 131, which is
12 Testimony of Alan Zolin, Part 5?

13 A. Yes, I will. But I would like to start first by
14 clearing up a question I think I just heard with Rob up here.
15 I already testified in support of the general 1000 provisions
16 for Dairy Institute. The section I'm going to be speaking
17 about now is part of that Section 1000, it's the non-member
18 deduction, is the way I refer to it. I'm specifically
19 testifying for Hilmar Cheese Company on this issue.

20 So with that, I'll read my testimony.

21 My name is Alan Zolin. I have been retained by Hilmar
22 Cheese Company (HCC) to work with Dairy Institute of California
23 (DIC) to develop an alternative proposal to Cooperative
24 Proposal 1. I have worked with a task force made up of a
25 number of representatives --

1 Q. You are going a little too fast, I think. You were
2 starting to speed up. And the court reporter agrees with me.

3 A. I want to finish at least one thing today.

4 I have worked with a task force made up of a number of
5 representatives from DIC member companies in order to develop
6 and submit Proposal 2.

7 Description of Proposal 2 Deduction for Marketing Assessment

8 In Proposal 2, DIC has proposed to adopt the
9 Section 1000.86 language for the deduction for marketing
10 services. Mr. Mykrantz provided testimony on the operational
11 aspects of the provision and what services are provided by the
12 Market Administrator (MA) for non-member producers. Basically,
13 the MA provides market information and dairy industry news to
14 non-member producers. The MA also provides the verification of
15 the component tests that is utilized in the payment of
16 non-member producers.

17 Description of HCC Producer Information and General Background

18 HCC is the largest buyer of non-member milk in the
19 state of California. As a farmer-owned company, HCC has
20 developed extensive market information tools for the direct
21 shipper to help run their dairy business. I have included the
22 screen shots of the HCC producer services website. These
23 screen shots are meant as an example of the type of information
24 that is provided to the direct shipper (and the owners as
25 well). HCC provides numerous web site links to public

1 information sites. These links include, I'm sorry, these
2 include links to the CME website, the Cheese Market News
3 website, Dairy Market News website, (publication from USDA),
4 etcetera.

5 HCC produces a monthly newsletter called Producer
6 Connection that provides both HCC specific information and
7 general industry information to the direct shippers. This HCC
8 specific information would include quality award winners,
9 cheese yield award winners, news about the Turlock, California
10 powder plant, producer annual meeting location luncheons, and
11 details about specific pricing programs that HCC offers to its
12 direct shippers. The general market information would be, for
13 example, information about the FMMO hearing in California. The
14 producer connection is posted to the HCC website. It is mailed
15 to every direct shipper through the USPS and faxed to every
16 direct shipper that has a fax machine.

17 I would like to break away from my written testimony.
18 It was brought to my attention that also there's a weekly
19 publication that Hilmar puts out and does the exact same thing.
20 It is mailed, it's faxed, and it's put up on the website. And
21 I believe it's called Weekly Dairy Facts.

22 At this time I would like to turn to the exhibit and
23 just walk through the three or four pages that I have on that
24 exhibit.

25 Page 1 of the exhibit is a screen shot of the Producer

1 Services home page. And going across the top, you can see
2 there's a tab for resources, a tab for news, a tab for risk
3 management programs, and a tab to contact the milk team. This
4 would be the team of Hilmar employees that work directly with
5 the direct shippers.

6 Down the left hand side of the home page under the
7 column that's headed producer services, you would have Daily
8 Market updates, that would be links to the CME website, as well
9 as the Dairy Market News website. Obviously, the next one
10 down, Hilmar Producer Connection, that's the newsletter that is
11 specific to the producers in California. The Dalhart Producer
12 Connection would be specific to the Dalhart producers. The
13 producer handbook for both locations would deal with quality
14 information, and basically the terms of agreement between
15 Hilmar and the direct shipper. A market basket premium
16 calculator, where the individual farmer can go in, and based on
17 his components and quality, calculate what his pay price will
18 be from Hilmar for both the California market and the Texas
19 market. Different farm maintenance information, and then again
20 a tab for Ask the Milk Team. Also on the website, as we look
21 at Hilmar reports and the Dalhart reports, the individual
22 producers can access their own specific information on
23 different types of test results, quality results, any payroll
24 statements if they need for tax purposes, as well as a
25 combination of reports.

1 Turning to the next page, the top says screen shots
2 from the HCC producer website. It's the resource and news
3 section, so there's actually two pages being shown on this
4 page. The first would be the resource. The page extends down
5 quite extensively and we were only able to capture about the
6 first quarter of the page, but again, links the different web
7 sites as well as resource information for the dairymen. The
8 news section, which would include both industry news, as well
9 as Hilmar-specific news.

10 Turning to the next page. The top says, A Sample of
11 Page 1 from the Hilmar Location Newsletter Sent to Producers.
12 A similar monthly newsletter is also sent to the Dalhart
13 producers. In the matter of confidentiality we crossed out the
14 actual names of the different producers that won the Cream of
15 the Crop award, as well as the Cheese Champs, and also the
16 producers that had the most improved cheese yields in the
17 formula. And again, this is a two-page newsletter, so this is
18 just example of page 1 of the type of information that goes out
19 to dairymen. We specifically picked this one because it did
20 have the information about the outreach programs that USDA did
21 hold in California, and giving them the locations and where
22 they were for them to be able to attend.

23 And then, again, part of the resource tab, I'm on the
24 next to the last, I think it is the last page of the exhibit,
25 this is again, a truncated version of the industry resources

1 that are available to the Hilmar shipper once they are on the
2 website for different links and for market information for the
3 producer to investigate.

4 And with that, I would like to go back to my written
5 testimony.

6 HCC contracts with an outside firm to conduct the
7 entire laboratory testing of the components in the direct
8 shipper's milk supply. It is the test results from the outside
9 firm that HCC uses and its producer payroll system to make
10 payments to the direct shippers. Part of the deduction for
11 non-member assessment is for verification of tests. The
12 concern, as I understood it, that underlies the present
13 assessment concept, was that the MA was assuring that the test
14 that a proprietary plant uses for payment to its producers were
15 accurate. With the use of third party testing companies in,
16 let me start again. With the use of third party testing
17 companies in California being commonplace, perhaps the need for
18 the cost and test verifications can be reduced.

19 JUDGE CLIFTON: Now, just read it from the word "perhaps".
20 Perhaps?

21 MR. ZOLIN: Perhaps the need for the -- I'm sorry, perhaps
22 the need for and cost of test verification can be reduced.

23 HCC Concerns About the Rate Charged for Marketing Services

24 Section 1000.86 allows the MA to set the rate to be
25 charged non-member producers at no more than 7 cents per

1 hundredweight. HCC requests that the MA research what
2 proprietary plant programs are made available to direct
3 shippers, and through that investigation, determine if the
4 information provided could be a substitute for the MA
5 information provided or, at a minimum, utilized to reduce the
6 cost of the MA services being provided. In the determination
7 of the rate to be charged, ACC requests that the rate be set at
8 a level that is reflective of the services provided. I am
9 aware that the deduction for non-member services does vary
10 between orders. I'm also aware from time to time that the
11 deduction may be waived by the MA, and I specifically reference
12 Central Order 32. That is in error, when I was on their
13 website, I believed I saw that the deduction had been waived,
14 but it was the Market Administrator assessment, I, by
15 mistakenly was reading the waiver of. But I will state that
16 the MA in Central Order 32, as recently I think about a year or
17 two ago, reduced their assessment from 6 cents to five cents.

18 HCC appreciates the diligence the MA's utilize to keep
19 costs in line, but HCC believes that the current California
20 dairy industry may present a different producer dynamic than
21 found in most other Federal Orders. In the Upper Midwest
22 Order 30, there are a few non-member producers.

23 JUDGE CLIFTON: Please read that sentence again.

24 THE WITNESS: I see it. The microphone gets right in the
25 way of my eye to see.

1 In the Upper Midwest Order, there are very --

2 JUDGE CLIFTON: Wait, wait, just a minute. I think you can
3 put the microphone a little to the left or the right so that
4 you can see your page, and read it one more time, please.

5 MR. ZOLIN: In the Upper Midwest Order 30 there are very
6 few non-member producers. The reason is that the 7 cent per
7 hundredweight charge to non-member producers is onerous. What
8 has occurred in the marketplace is marketing cooperatives have
9 been created and most non-members have joined these
10 cooperatives. In my opinion, the sole reason for those
11 cooperatives existence, is to allow the dairy farmer to avoid
12 the full 7 cent charge. These marketing cooperatives charge
13 their producer members one and one half cents, and then I wrote
14 down (1 1/2 cents per hundredweight). The dairy farmer owners
15 of HCC would serious consider the option of joining a marketing
16 cooperative for themselves and the other direct shippers to
17 Hilmar if the rate set for the non-member deduction is too
18 high.

19 And this concludes my testimony.

20 MR. ENGLISH: Just one note for the record, your Honor.
21 The screen shots from the website for the official record copy
22 and for what was provided to you and the court reporter, are in
23 color. For everyone else, they are in black and white. Your
24 Honor, I move the admission of Exhibit 131 and 132.

25 JUDGE CLIFTON: Does anyone wish to question Mr. Zolin on

1 either of these exhibits before determining whether you have
2 objections? No one. Is there any objection to the admission
3 into evidence of Exhibit 131? There are none. Exhibit 131 is
4 admitted into evidence.

5 (Thereafter, Exhibit Number 131, was
6 received into evidence.)

7 JUDGE CLIFTON: Are there any objections of the admission
8 into evidence of Exhibit 132? There are none. Exhibit 132 is
9 admitted into evidence.

10 (Thereafter, Exhibit Number 132, was
11 received into evidence.)

12 MR. ENGLISH: Your Honor, the witness is available for
13 further examination.

14 MR. ZOLIN: And if I could add one comment on this?

15 MR. ENGLISH: Or the witness may add another comment.

16 MR. ZOLIN: And directly to the Department. With my final
17 statement, I guess I left a "so what" off of the page. And
18 basically what we're, what I'm here to testify to, is as the
19 marketing cooperatives can perform the types of services that
20 the MA requires as far as being a qualified cooperative, and
21 they are charging the cost of one and a half cents, I would
22 really appreciate the Department looking at how they can have
23 their cost in that one and a half cent range like the marketing
24 cooperatives do. So the "so what" is, there's a huge
25 difference in overall dollars paid between a 7 cent and one and

1 a half cents with the type of milk we're talking about here in
2 the State of California. So, and that does conclude my
3 testimony.

4 JUDGE CLIFTON: Who would like to begin cross-examination
5 of Mr. Zolin on this topic?

6 CROSS-EXAMINATION

7 BY MS. TAYLOR:

8 Q. Good afternoon, Mr. Zolin.

9 A. Good afternoon.

10 Q. First, it was just pointed out to me on your exhibit
11 where you, on the second page where you have in paren "Central
12 Order 32" but in your discussion you talked about how that was
13 not, in fact, the case. If we could --

14 A. Exactly, it was in error.

15 Q. So we --

16 A. I did see a waiver, but it was the MA fee and not the
17 non-member fee, so I picked off the wrong line.

18 Q. Can we strike that line from your --

19 A. You certainly can.

20 Q. The whole sentence and the parens?

21 A. Correct.

22 Q. Okay.

23 A. I am not aware of any other Order that may have waived
24 the non-member assessment.

25 Q. So we're striking the sentence "I am also aware that

1 from time to time the deduction has been waived by the MA", in
2 parens, "Central Order 32"?

3 A. Correct.

4 Q. Okay.

5 JUDGE CLIFTON: Thank you. Ms. Frisius is nodding her head
6 yes, so she has got it, and I'm doing it also on my copy.

7 Good. Thank you.

8 BY MS. TAYLOR:

9 Q. It might be also somewhere -- my question, the answer
10 to my question might be somewhere in the past six weeks' of
11 testimony, but for efficiency sake, how many direct shippers
12 has Hilmar have?

13 A. I believe the number I have testified in the past is
14 somewhere above 200.

15 Q. Okay. And --

16 JUDGE CLIFTON: And there you are just talking about the
17 plant in California?

18 MR. ZOLIN: That is correct. That is just a plant in
19 California.

20 BY MS. TAYLOR:

21 Q. And you provide these marketing services which you have
22 elaborated to all your producers?

23 A. In the state of California and -- that ship to the
24 plant in California, as well as that ship to the plant in
25 Dalhart, Texas.

1 Q. Is that, is the service you provide, do they pay an
2 extra assessment to Hilmar or that's just part of the service
3 you provide in the price that they receive for their milk?

4 A. The way I understand the, it is not a charge to the
5 producer, it is a service that Hilmar Cheese provides both in
6 Texas and in California.

7 Q. Okay. And do you know if, you said you would like the
8 Department to investigate the proper level, and you would think
9 that would be around one and a half cents, because that is what
10 marketing cooperatives in Order 30 currently charge?

11 A. That is correct.

12 Q. Do you know if that's about what it cost Hilmar, I
13 mean, to provide those services?

14 A. The certainly --

15 JUDGE CLIFTON: Wait, wait, wait, just a minute. Did you
16 say that that's because that's what is charged in Order 30?

17 MR. ZOLIN: It is what is charged by marketing cooperatives
18 that are operating in Order 30.

19 JUDGE CLIFTON: Okay. All right. So Ms. Taylor was
20 correct. I didn't catch that. Thank you.

21 MR. ZOLIN: And as far as the cost of Hilmar providing the
22 services for third party testing, as well as the market
23 information, it is in the range of one and a half cents to two
24 cents.

25 BY MS. TAYLOR:

1 Q. Great. And on page, your first page, the last sentence
2 actually talks about the use of third party testing companies
3 in California is commonplace. Could you elaborate on that?
4 You have discussed for Hilmar, but we haven't asked any other
5 actual plants before this point if they do that.

6 A. It is my understanding that a number of the members of
7 Dairy Institute that have direct shippers, use third party
8 labs. It is also, I am aware that some of the cooperatives in
9 California, specifically two that I know of that are Proponents
10 of Proposal 1, use third party labs.

11 Q. Okay. What's CDFA's role then? You send those lab
12 tests to them so they can verify payroll, etcetera?

13 A. I honestly don't know what CDFA's role is in the
14 verification of tests for producers.

15 Q. Okay. That's all the questions I have. Thank you.

16 JUDGE CLIFTON: Does anyone else have cross-examination
17 questions for Mr. Zolin? No one. Is there any redirect?
18 None. All right. Thank you, Mr. Zolin. You may step down.

19 MR. ENGLISH: Well, your Honor, I note it is twelve minutes
20 to the hour and I have actually run out of witnesses for the
21 day and I have caught up with yesterday. So for the preview
22 that I gave you yesterday morning and to today, I'm actually on
23 schedule.

24 I continue to have many moving parts and people who may
25 or may not appear. So I'm going to talk about people I know

1 are appearing, rather than whatever else.

2 For tomorrow, we are expecting Dr. Mark Stephenson.
3 I'm not going to repeat the caveats again, I'll do it tomorrow
4 morning. But we're expecting Dr. Mark Stephenson, and if he is
5 done, and if the very light, breezy, and short testimony of
6 Ms. Taylor is ready, we will then proceed with that tomorrow.

7 JUDGE CLIFTON: She's in the room, folks, she's back by the
8 copy machine. She heard him. Light, breezy, short, from an
9 Economist, right? She said, "he's being sarcastic."

10 MR. ENGLISH: For which I'll pay in some way, your Honor.
11 So that is tomorrow's schedule.

12 JUDGE CLIFTON: You think that will consume the entire day?

13 MR. ENGLISH: I can't guarantee it, but I seriously believe
14 that it should.

15 JUDGE CLIFTON: Ms. Taylor -- this is Ms. Erin Taylor that
16 I'm calling on.

17 MS. TAYLOR: I was going to request sometime before you all
18 finish your case-in-chief, you indicated that there would not
19 be a witness talking about the Class I differentials in the
20 future. Is there any way at some point to provide a list of
21 maybe topics you won't be providing a witness on, just for us
22 when we're going back through the record and trying to make
23 sure we don't accidentally overlook a provision that you did or
24 didn't discuss?

25 MR. ENGLISH: I will try to figure out how I can do that.

1 I don't know if it will be by the end of the hearing, but I
2 mean, I think --

3 JUDGE CLIFTON: Could be in the briefs?

4 MS. TAYLOR: That's fine. And I mean, maybe Class I
5 differentials is the main one, I have no idea. But, if -- just
6 so it's a little more, we can just be a little more organized
7 going forward trying to work on a decision.

8 MR. ENGLISH: Well, I think we didn't talk about Class II
9 differential, either.

10 MS. TAYLOR: That's very true.

11 MR. ENGLISH: So I think, let me see what I can do. And
12 maybe a statement of counsel at the end when we're doing
13 official notice things or whatever, but I will -- let me think
14 about it.

15 MS. TAYLOR: That will be great. Thank you.

16 JUDGE CLIFTON: While we have got just a minute, did you
17 finish?

18 MR. ENGLISH: Yes, your Honor.

19 JUDGE CLIFTON: Okay. Mr. Beshore?

20 MR. BESHORE: I'm interested in the next witness.

21 JUDGE CLIFTON: Come to the microphone, please.

22 MR. BESHORE: If we complete --

23 JUDGE CLIFTON: Whoa, don't talk until you get there.

24 MR. BESHORE: Marvin Beshore. When we complete Ms. Taylor
25 mid-afternoon tomorrow, I'm wondering who the next witness will

1 be.

2 MR. ENGLISH: I think her statements presently -- never
3 mind. I do not have another witness for tomorrow. It actually
4 is my sincere belief that those two will cover day. And I have
5 done everything I can to be, provide this information. This is
6 the first hearing we have ever done that kind of thing. I do
7 not have where I'm going next, because I don't have things done
8 yet, Mr. Beshore.

9 I mean, it is all just-in-time production, and there is
10 nothing else at the moment that I'm aware of that is ready to
11 go. And it won't be ready tomorrow. And besides which, it is
12 my genuine professional belief that those two, and in fact, I
13 think possibly the one, could consume the day.

14 JUDGE CLIFTON: All right. Now, here's my question, don't
15 leave, Mr. English. We know that when Mr. Beshore completed
16 his case-in-chief, that then you, Mr. English, began with your
17 case-in-chief. So my question to all the attorneys is, when
18 each of you has completed his case-in-chief, how do you want to
19 handle what comes next? And I guess I should hear from
20 Mr. Beshore first on that.

21 MR. BESHORE: I guess we have had some very loose informal
22 discussions, but my assumption and recommendation would be that
23 Ms. Hancock would then proceed with her witnesses with respect
24 to Proposal 3 and Proposal 4. After which, we have some
25 rebuttal, not lengthy, but some rebuttal with respect to our

1 case. And I guess we would go right down the line from there.
2 Those are as formulated thoughts as I have at this point.

3 JUDGE CLIFTON: All right. And then I'll hear from
4 Mr. English about what happens after all the cases in chief
5 have been presented, and then I'll hear from Ms. Hancock.

6 MR. ENGLISH: First, I agree. One of those things we did a
7 lot more in the early part of the proceeding. I think we hear
8 from Ms. Hancock and her witnesses on Proposals 3 and 4, and
9 Dairy Institute may, may not have rebuttal of proposal,
10 something on 3 or 4 since we obviously won't have heard it
11 until then.

12 But I think that, you know, the way these hearings have
13 run recently, the last word has gone to the Proponents of
14 Proposal 1. And so I certainly think that the way he is
15 describing it, is accurate.

16 JUDGE CLIFTON: All right. And Ms. Hancock?

17 MS. HANCOCK: I think when Mr. English is finished with his
18 case, I will present Proposal number 3. We anticipate we'll
19 have six witnesses; four producer-handlers, an order language
20 person, and somebody to provide more historical information on
21 the State Pooling Act. And then when that's finished, I'll
22 move into Proposal number 4 for Ponderosa. At this point I
23 anticipate two witnesses, one on Federal Order, and one from
24 the entity perspective.

25 I don't honestly, I mean, if Mr. English finishes to

1 where I put one witness on on Friday, I think Monday we would
2 conclude producer-handlers. None of these, other than the
3 first witness, is going to be overly lengthy. I guess all of
4 that just depends on how long the cross-examinations are. And
5 I would anticipate Ponderosa's would finish on Tuesday. And
6 maybe this is all very optimistic, you know, you never really
7 know. I have told everybody else, not the USDA, generally I'm
8 optimistic by nature. It could just be that's me, but if we
9 really do get one witness on the stand on Friday, like I say,
10 by lunch, it's likely that we could finish three by the end of
11 the day. Did I say Friday? If we get one on the stand on
12 Friday, it is likely we could finish producer-handlers on
13 Monday.

14 And I will, a lot of my, all but one of my witnesses
15 are coming from out-of-town. So at this point I only have one
16 witness coming on Friday. And I don't want to have them fly
17 in, to then have to kick them back out for the weekend. So
18 that's where I'm at for scheduling for Friday.

19 MR. ENGLISH: Your Honor, Chip English. Let me say two
20 things. First, I have committed to Ms. Hancock to keep her as
21 informed as I can. I think tomorrow is the telling day about
22 where this is, and I will keep her informed so she can make
23 what decisions she can. And certainly at the end of the day
24 tomorrow I'm going to have a much better idea about whether we
25 are going to finish, as I have hopefully projected, by Friday

1 morning.

2 Let me try to respond to Mr. Beshore maybe a little
3 different way. I don't have things prepared, but here's the
4 topics left. And I have already committed that we won't start
5 quota before Thursday morning, which is part of why I don't
6 have something for tomorrow, if we're done with -- so again,
7 I'm assuring you, as I have before, because of Mr. Vlahos
8 especially, that we're not going to start quota until Thursday,
9 and that is one of the reasons why I'm not going to have
10 something else tomorrow, I'm not going to say it is the only
11 reason, but it is one of the reasons. The other topics we
12 still have to cover --

13 JUDGE CLIFTON: Let me get out my tentative schedule here.
14 Okay. You may proceed.

15 MR. ENGLISH: Okay. So related to that, and as to the
16 initial issue of quota, there will be either one or two
17 witnesses. In addition, Mr. Zolin will return for Part 6 on
18 the 9(d) provision, because it's directly related to quota.

19 JUDGE CLIFTON: That's D like dog?

20 MR. ENGLISH: D like dog, Section 9(d). Mr. Blaufuss will
21 return for Part 4 on fortification allowance. At some point,
22 Mr. Zolin, Mr. Blaufuss, a combination of the two, will return
23 to the stand to speak to the 7(c) question that has been
24 pending now since last week.

25 We still have transportation credits, and I just don't

1 think that's going to get done this week, but we're still
2 trying. And we have Dean Foods on producer-handler, which
3 obviously we'll do before we hand it over to Proposal 3.

4 So there are some other people who, you know, may or
5 may not show up. If they do, they will be relatively short
6 statements. I just don't have enough fixed on that to know
7 whether it is even going to happen. But I think, Mr. Beshore,
8 that's what I can tell you where we are. I hope that helps.

9 MR. BESHORE: Helpful, yes.

10 JUDGE CLIFTON: And my other question for you, Mr. English,
11 is what is the status of the Federal trial the week after next?

12 MR. ENGLISH: Well, it is not a trial, but it is a hearing
13 that is set for Motion to Amend. The Judge, again, has always
14 in the past, at least three times, maybe four times, we have
15 never actually had a hearing in the case, and the Judge has
16 always, 48-hours before the hearing is scheduled, removed the
17 case from the hearing docket.

18 It is presently still on the hearing docket for Monday
19 afternoon, November 16th, at 1:30. It is my fond hope that we
20 will be done by then. So -- but that is still on the docket.
21 And obviously, I'll continue to give you any update you ask
22 for, but if it is taken off the docket, I will let you know,
23 and obviously, Ms. Megan Oliver Thompson would know when I know
24 as well. So we will inform people as soon as we know.

25 JUDGE CLIFTON: So let me ask you, is the worst that could

1 happen is that you would not be able to participate, and
2 therefore, I think we would not go forward on the one day,
3 Monday, November 16th?

4 MR. ENGLISH: And only in the afternoon, your Honor.

5 JUDGE CLIFTON: So you could actually be here for part of
6 the day?

7 MR. ENGLISH: Yes, I have no reason to believe I couldn't
8 be here for the morning.

9 JUDGE CLIFTON: Okay. And I will commit to you any
10 information I can give you, and all I can say is, we have never
11 had a hearing yet. Maybe this will be the one time.

12 JUDGE CLIFTON: All right. Mr. Beshore?

13 MR. BESHORE: Yes.

14 JUDGE CLIFTON: And it is 5:00, so we want to wrap this up
15 pretty quick.

16 MR. BESHORE: This is just real quick, just in the interest
17 of getting all the information out that we're aware of. I
18 think the word has gotten out to the countryside that we may
19 not be here forever, and there are some dairy farmers who have
20 indicated that they are interested in coming and testifying
21 next week, three or four I think have tentatively indicated to
22 our team that they may, may come in. So we'll have some dairy
23 farmers next week.

24 JUDGE CLIFTON: Good.

25 MR. ENGLISH: Thank you, Mr. Beshore. And if they show up

1 this week or some others show up this week, obviously we will,
2 as always, accommodate them.

3 JUDGE CLIFTON: Yes, I would kind of like them not to
4 interrupt Dr. Stephenson.

5 MR. ENGLISH: I wasn't -- yes, I would like that as well.

6 JUDGE CLIFTON: That will work out well if they are not in
7 conflict with his time, although they may want to be here to
8 hear him.

9 All right. I believe we can go off record. Is there
10 anything further before we do that? No? May we leave our
11 things here in place? Excellent. Good.

12 I'll see you tomorrow morning. We'll go on record at
13 9:00. You are welcome to come as early as 8:00. We go off
14 record at 5:01.

15 (Whereupon, the evening recess was taken.)

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COURT REPORTERS CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO)

I, MYRA A. PISH, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 11613, issued by the Court Reporters Board of California and which is in full force and effect.

I am not financially interested in this action and am not a relative or employee of any attorney of the parties, or of any of the parties.

I am the reporter that stenographically recorded the testimony in the foregoing proceeding and the foregoing transcript is a true record of the testimony given.

DATED: December 16, 2015
 FRESNO, CALIFORNIA



MYRA A. PISH, CSR
Certificate No. 11613

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